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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. [redacted] 180

W. S. TATUM ET AL.,
Petitioners,

vs.

JOE B. SINGER ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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INDEX

Opinions Below 2
Jurisdictional Grounds 2
Questions Presented 3
Pertinent Constitutional Provisions and Statutes 4
Statement of the Case 4
Federal Questions, How and When Raised 8
Reasons for Allowance of the Writ 16

Argument—

I. Under the Full Faith and Credit Clause, Did the Supreme Court of the State of Mississippi, at the Instance of Respondents, Have the Constitutional Power to Supersede That Expressly Done by the State of Louisiana, Its Officers and Courts, and Wrongfully Take from Petitioners That Which Had Been to Petitioners' Predecessor in Title Validly Conveyed and Warranted by the State of Louisiana in the Liquidation of Hibernia Bank & Trust Company, Namely, Gravel, Especially When for Twenty-Two Years Both Louisiana and Petitioners Were at One As to the Property Rights 18

II. Has There Not Been a Flagrant Violation of the Full Faith and Credit Clause and the Fourteenth Amendment, Whereasto This Court Is Obligated to Rectify, When the Deed of December 30, 1937, Conveyed All of the Land with a Reservation of "Oil, Mineral, Gas and Petroleum" and Mississippi's Court Rewrote That Reservation to Read "All the Minerals and Mineral Rights, Including Oil, Gas and Other Hydrocarbons, Sulphur, Gravel, Salt and All Other Minerals and Mineral Rights in, on and under the Lands Described" Without Louisiana Being in Any Way a Party to This Cause or to the Judgment Reforming Said Deed 34

III. Do Not the Rights of the United States, under the Lease to the Atomic Energy Commission, Demand Certiorari in the Public Interest 43

Conclusion 44

Certificate of Service 45

Appendix—

Appendix "A", Opinion of the Supreme Court of Mississippi rendered on January 25, 1965 ..... A1

Appendix "B", Judgment of the Supreme Court of Mississippi rendered on January 25, 1965 ..... A63

Appendix "C", Final Decree of the Chancery Court of Lamar County entered on June 7, 1963 ..... A44

Appendix "D", Title 28 United States Code, Sections 1257(3) and 2101(c) A49

Appendix "E", United States Constitution, Article IV, Section 1; Article III, Section 2 and the Fourteenth Amendment, Section 1 ..... A50

Appendix "F", Title 28 United States Code, Sections 1738, 1739 ..... A51

Appendix "G", Louisiana Constitution, Article 6, Section 18; Revised Statutes 6:386, 6:401; LSA-Civil Code, Articles 2276, 1945 ..... A52

Appendix "H", General Warranty Deed, Hibernia to Tatum A54

Appendix "I", Discussion of Exhibits 1 to 13 by the Mississippi Court A71

Appendix "J", Order A81

TABLE OF CASES

American Surety Co. v. *Baldwin*, 287 U.S. 156, 77 L.ed. 236 16

Angel v. *Bullington*, 330 U.S. 183, 91 L.ed. 832 37-38

Arizona Grocery Co. v. *Atchison, T. & S. F. R. Co.*, 284 U.S. 600, 76 L.ed. 515 32

Bambauer v. *Menjoulet*, 214 Cal. App.2d 871, 29 Cal. Repr. 874, 95 A.L.R. 2d 839 12

Barney v. *Baltimore*, 73 U.S. 280, 18 L.ed. 825 36

Berman v. *Parker*, 348 U.S. 26, 99 L.ed. 27 31

Boles v. *Stevenson*, 379 U.S. 43, 13 L.ed. 2d 109 38

Bradford Electric Co. v. *Clapper*, 286 U.S. 145, 76 L.ed. 1026 30

Brinkerhoff-Faris Trust & Savings Co. v. *Hill*, 281 U.S. 673, 678, 74 L.ed. 1107, 1112 15

Brown v. *Sutton*, 158 Miss. 78, 121 So. 835 15

Bumpus v. *United States*, C.A. 10, 325 F.2d 264 12

Burke v. *Southern P. R. Co.*, 234 U.S. 669, 679, 58 L.ed. 1527, 1544 ..... 10, 12, 17

California Co. v. *State Oil & Gas Board*, 200 Miss. 849, 27 So.2d 548 32

Carroll v. *Lanza*, 349 U.S. 408, 99 L.ed. 1183, 1189 28

Caruth v. *Gillespie*, 109 Miss. 679, 68 So. 927, 929 23

Cates v. *Allen*, 149 U.S. 451, 37 L.ed. 804 28

Chase National Bank v. *Norwalk*, 291 U.S. 431, 78 L.ed. 894 35

City of Meridian v. *Southern Bell Tel. & Tel. Co.*, 358 U.S. 639, 3 L.ed. 2d 562 24

Clark v. *Williard*, 292 U.S. 112, 78 L.ed. 1160 28

Cole v. *McDonald*, 236 Miss. 168, 109 So.2d 628 42

Conner v. *Hendrix*, 194 Va. 17, 72 S.E.2d 259, 265 5

Crider v. *Zurich Insurance Co.*, ... U.S. ....., 13 L.ed 2d 641 ..... 8, 17, 19, 28, 29

Cummings v. *Midstates Oil Corporation*, 193 Miss. 675, 9 So.2d 648 19

Davis v. *Stegall*, 246 Miss. 593, 151 So.2d 813 24

Dowling v. *Canal Bank & Trust Co.*, 216 La. 372, 43 So.2d 763 22

Dred Scott v. *Sanford*, 19 How. 393, 15 L.ed. 691, 768 36

Dupre v. *Dupre*, La.Ct.App., 72 So.2d 589 27
Durfee v. *Duke*, 375 U.S. 106, 11 L.ed. 2d 186 .....14, 28, 38
El Paso v. *Simmons*, 379 U.S. 497, 13 L.ed. 2d 446, 465 .....14, 17, 19
England v. *Louisiana State Board of Medical Examiners*, 375 U.S. 411, 11 L.ed. 2d 440 23
Fauntleroy v. *Lum*, 210 U.S. 230, 52 L.ed. 1039 14
Fletcher v. *Peck*, 6 Cranch. 87, 3 L.ed. 162 .....10, 17, 19
Gaston v. *Mitchell*, 192 Miss. 452, 4 So.2d 892 27
Glasscock v. *Farmers Royalty Holding Co.*, C.A. 5, 152 F.2d 837 13
Great Northern Railway Co. v. *Sunburst Oil & Refining Co.*, 287 U.S. 358, 77 L.ed. 360 16
Griffin v. *County School Bd. of Prince Edward County*, 377 U.S. 218, 12 L.ed. 2d 256 42
Grissom v. *Anderson*, 125 Tex. 26, 79 S.W.2d 619, 622 19
Gully v. *Interstate Natural Gas Co.*, 292 U.S. 16, 78 L. ed. 1088, 1091 41
Gunnison County Commissioners v. *Rollins & Sons*, 173 U.S. 255, 43 L.ed. 689, 696 23
Harrington v. *Harrington*, 2 How. 701, 718 (1838) 44
Henry v. *Mississippi*, 379 U.S. 443, 13 L.ed. 2d 408 .....30, 38, 41, 42
Herndon v. *Georgia*, 295 U.S. 441, 79 L.ed. 1530 16
Hiern v. *Interstate Trust & Banking Co.*, 178 La. 998, 152 So. 684, 687 .....20, 31
Hilton v. *Atlantic Ref. Co.*, C.A. 5, 327 F.2d 217, 218 35
Holland v. *Bass*, Miss., 45 So.2d 743 27
In re Hibernia Bank & Trust Co., 203 La. 195, 13 So.2d 833 22
In re Liquidation of Hibernia Bank & Trust Co., 205 La. 890, 18 So.2d 330, 333 .....21, 39
Interstate Trust & Banking Co. v. *Jones County, Miss.*, C.A. 5, 77 F.2d 806 22

Jackson v. *Denno*, 378 U.S. 368, 12 L.ed. 2d 908 ..... 30, 38
Liquidation of Canal Bank & Trust Co., 211 La. 803, 30 So.2d 841 22
Louisiana Power & Light Co. v. *Thibodaux*, 360 U.S. 25, 3 L.ed. 2d 1058 ..... 23, 39
Lumberman Mutual Cas. Co. v. *Elbert*, 348 U.S. 48, 99 L.ed. 50, 64 36
Lyle Cashion Co. v. *McKendrick*, 227 Miss. 894, 87 So.2d 289 28
Mallow v. *Hinde*, 12 Wheat. 193, 198, 6 L.ed. 599, 600 ..... 9, 10, 35
Mansfield, C. & L. M. R. Co. v. *Swan*, 111 U.S. 379, 28 L.ed. 462 36
McNeill v. *Lee*, 79 Miss. 455, 30 So. 821 8
Meridian v. *Southern Bell Tel. & Tel. Co.*, 358 U.S. 639, 3 L.ed. 2d 562 40
Mississippi Power & Light Co. v. *Town of Coldwater*, 168 F.Supp. 463, 478 9
Missouri v. *Gehner*, 281 U.S. 313, 320, 74 L.ed. 870, 875 15
Morgan v. *United States*, 304 U.S. 1, 82 L.ed. 1129 36
Moss v. *Jourdan*, 129 Miss. 598, 92 So. 689 42
National Ins. Co. v. *Tidewater T. Co.*, 337 U.S. 582, 93 L.ed. 1556, 1575 37
Northern Pacific Railway Co. v. *Soderberg*, 188 U.S. 526, 47 L.ed. 575 12
Olmsted v. *Olmsted*, 216 U.S. 386, 54 L.ed. 530 ..... 17, 28
Oregon v. *Jennings*, 119 U.S. 74, 30 L.ed. 323 23
Pennoyer v. *Neff*, 95 U.S. 714, 24 L.ed. 565 ..... 13, 34
Poe v. *Ullman*, 367 U.S. 497, 6 L.ed. 2d 989 31
Relf v. *Rundle*, 103 U.S. 222, 26 L.ed. 337 ..... 8, 27
Saunders v. *Shaw*, 244 U.S. 317, 320, 61 L.ed. 1163, 1165 14
Scott v. *Neely*, 140 U.S. 106, 35 L.ed. 358 28

Seneca Nation of Indians v. *United States*, C.A. 2, 338 F.2d 55, 57 31

Shenandoah Broadcasting Co. v. *ASCAP*, 375 U.S. 994, 11 L.ed. 2d 467, 468, 469 40

Sherrer v. *Sherrer*, 334 U.S. 343, 350, 92 L.ed. 1429, 1436 38

Shields v. *Barrow*, 17 How. 130, 15 L.ed. 158 ..... 9, 10, 35

Singer v. *Tatum*, 171 So.2d 134, 138, 143, 146 ..... 2, 11, 19, 31, 34

State Board of Optometry v. *Orkin*, ... Miss. ....., 162 So.2d 883 32

Stevens v. *Loomis*, C.A. 1, 334 F.2d 775, 777 37

Stoner v. *California*, 376 U.S. 483, 11 L.ed. 2d 856 30

Tardon v. *California Oil Co.*, C.A. 5, 323 F.2d 717, 722 36

Turner v. *Turner*, 241 Miss. 444, 130 So.2d 871, 875 44

United Service Life Ins. Co. v. *Delaney*, C.A. 5, 328 F.2d 483, cert. den. 377 U.S. 935, 12 L.ed. 2d 298 24

United States v. *Aetna Casualty & S. Co.*, 338 U.S. 366, 94 L.ed. 171, 186 36

United States v. *Barnett*, 376 U.S. 681, 12 L.ed. 2d 23, 30 39

United States v. *Carmack*, 329 U.S. 230, 91 L.ed. 209 .. 32

United States v. *Chavez*, 175 U.S. 509, 44 L.ed. 255 22

United States v. *Heinszen*, 206 U.S. 370, 51 L.ed. 1098 22

United States v. *Mersky*, 361 U.S. 431, 4 L.ed. 2d 423 .. 32

United States v. *Public Utilities Commission*, 345 U.S. 295, 97 L.ed. 1020 42

United States v. *Twin City Power Co.*, 350 U.S. 222, 100 L.ed. 240, 245 31

United States v. *School Board, Prince George County, Va.*, D.C. Va., 221 F. Supp. 93, 99 12

United States v. *Singer Manufacturing Co.*, 374 U.S. 174, 10 L.ed. 2d 823 22

United States v. *Sumter County School District*, D.C., S.C., 232 F. Supp. 945, 950 12

Updegrave v. *Reliance National Investors Corp.*, C.A. 9, 337 F.2d 604, 605 36

Williams v. *North Carolina*, 317 U.S. 287, 294, 87 L.ed. 279, 283 28
Wilson v. *Cook*, 327 U.S. 474, 90 L.ed. 793 16
Witherspoon v. *Campbell*, 219 Miss. 640, 69 So.2d 384 ..... 12, 42

TEXTS, CONSTITUTIONS AND STATUTES

95 A.L.R. 2d 843 12
24 Am. Jur., "Gas and Oil", Section 2 12
45 Am. Jur., "Reformation of Instruments", Section 93, p. 642 36
38 C.J.S., "Gas", Section 1 12
58 C.J.S., "Mines and Minerals", Section 2, p. 17 12
76 C.J.S., "Reformation of Instruments", Section 70, p. 423 36
Griffith's Mississippi Chancery Practice, Section 192 8
Louisiana Constitution, Article 6, Section 18 ..... 4, 20
Louisiana Statutes—
Article 1945, LSA-Civil Code 4, 27
Article 2276, LSA-Civil Code 4, 27
Revised Statutes 6:386 (Act No. 300 of 1910) 4, 9, 20
Revised Statutes 6:401 (Act No. 111 of 1920) 4, 20
Mississippi Constitution, Sections 1 and 2 32
Recompiled Mississippi Code of 1942, Section 867 23
1A Summers, Oil & Gas, Perm. Ed., Section 135, p. 263 11-12
United States Constitution—
Article III, Section II 4, 33
Article IV, Section 1 ..... 4, 13, 18
Article VI, Cl. 2 35
Fourteenth Amendment 4, 13, 18
28 U.S.C., Section 1257(3) 3
28 U.S.C., Section 2101(c) 3
28 U.S.C., Section 1738 ..... 4, 32
28 U.S.C., Section 1739 ..... 4, 32

IN THE

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OCTOBER TERM, 1964

No. .....

W. S. TATUM ET AL.,
Petitioners,

vs.

JOE B. SINGER ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

W. S. Tatum, F. M. Tatum, Mrs. Minnie T. Liggett, Mrs. Elizabeth T. McKinnon, Addison T. Tatum, Frederick E. Tatum, William W. Tatum, in his own proper person and also by Mrs. Ruth I. Tatum, Guardian and Next Friend, Addison T. Tatum and Frederick E. Tatum, Trustees for William W. Tatum, Mrs. Ruth I. Tatum, Guardian of William W. Tatum, and M. M. Roberts, Addison T. Tatum, Mrs. Minnie T. Tatum, Executors of the Estate of W. O. Tatum, Deceased, the heirs and devisees of W. S. F. Tatum, grantee in the deed from Hibernia Bank & Trust Company, in Liquidation (herein referred to as "Liquidation"), of December 30, 1937, hereinafter referred to as "Petitioners",

pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Mississippi rendered on January 25, 1965.

The Respondents are the cross-complainants, Joe B. Singer, Alex Singer, Joe L. Singer, R. H. Fleischaker, Adeline Singer Fleischaker, Singer-Fleischaker Royalty Company, a partnership composed of the persons just named, and Investors Royalty Company, Inc., who were the grantees in a deed dated October 7, 1959, from Hibernia Bank & Trust Company in Liquidation, made pursuant to an Opposition by them filed in the Civil District Court of Orleans Parish, Louisiana, in Cause No. 202-253, hereinafter referred to as "Respondents".

No other persons appealed from the decree of the Chancery Court of Lamar County, Mississippi, of date June 7, 1963.

A.

OPINIONS BELOW

The opinion of the Supreme Court of Mississippi rendered on January 25, 1965, annexed as Appendix "A", is unreported officially, but appears *Singer* v. *Tatum,* 171 So.2d 143.

The judgment of the Supreme Court of Missisippi was rendered on January 25, 1965, Appendix "B" hereto, unreported.

B.

JURISDICTIONAL GROUNDS

The Final Decree of the Chancery Court of Lamar County was entered on June 7, 1963, Appendix "C" hereto.

The judgment of the Supreme Court was rendered on January 25, 1965.

The Suggestion of Error was overruled on March 8, 1965, without opinion.

Jurisdiction to review by certiorari is conferred upon this Court by Section 1257(3) and Section 2101(c), 28 *U.S.C.*, Appendix "D" hereto.

C.

QUESTIONS PRESENTED

I. Under the Full Faith and Credit Clause, did the Supreme Court of the State of Mississippi, at the instance of Respondents, have the constitutional power to supersede that expressly done by the State of Louisiana, its officers and courts and wrongfully take from Petitioners that which had been to Petitioners' predecessor in title validly conveyed and warranted by the State of Louisiana in the liquidation of Hibernia Bank & Trust Company, namely, gravel, especially when for twenty-two years both Louisiana and Petitioners were at one as to the property rights?

II. Has there not been a flagrant violation of the Full Faith and Credit Clause and the Fourteenth Amendment, whereasto this Court is obligated to rectify, when the deed of December 30, 1937, conveyed all of the land with a reservation of "oil, mineral, gas and petroleum" and Mississippi's Supreme Court rewrote that reservation to read "all the minerals and mineral rights, including oil, gas and other hydrocarbons, sulphur, gravel, salt and all other minerals and mineral rights in, on and under the lands described" without Louisiana being in any way a party to this cause or to the judgment reforming said deed?

III. Do not the rights of the United States, under the lease to the Atomic Energy Commission, demand certiorari in the public interest?

D.

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

I. The *United States Constitution*, Appendix "E":

(a) The Full Faith and Credit Clause, Article IV, Section 1.

(b) Article III, Section II.

(c) The Fourteenth Amendment.

II. Title 28, *United States Code*, Appendix "F":

(a) Section 1738.

(b) Section 1739.

III. *Louisiana Constitution* and Statutes, Appendix "G":

(a) Article 6, Section 18.

(b) Revised Statutes 6:386 (Act No. 300 of 1910).

(c) Revised Statutes 6;401 (Act No. 111 of 1920).

(d) Article 2276, LSA-Civil Code.

(e) Article 1945, LSA-Civil Code.

E.

STATEMENT OF THE CASE

The Celtic Land & Improvement Company owned 21,435.51 acres of land in Lamar County, Mississippi. The Hibernia Bank & Trust Company was a metropolitan bank in New Orleans and, pursuant to the Constitution and laws of Louisiana, was being liquidated. The Reconstruction Finance Corporation, to an extent not clearly shown by the record, was interested. W. S. F. Tatum desired to purchase and communicated with the company, making an

offer of $140,000.00. Hibernia Bank & Trust Company, in Liquidation, had obtained title from Celtic Land & Improvement Company. Upon December 30, 1937, Hibernia delivered to Tatum a general warranty deed covering, inter alia, the 8,788.67 acres whereasto there is the dispute. That at issue are the rights existent under a reservation in said deed reading:

> "The grantor herein reserves unto itself, its agents or assigns, the oil, mineral, gas and petroleum, on, in or beneath all the lands herein conveyed which are situated in township One North, Range Sixteen west, and in township two North, Range Sixteen West, in Lamar County, Mississippi; and the oil, mineral, gas, and petroleum, rights and ownership so reserved by this conveyance are restricted solely to the lands herein conveyed in said Townships One and Two North, Range Sixteen West, Lamar County, Mississippi. The grantor, on behalf of itself, its agents or assigns, hereby reserve the usual and customary rights of ingress and egress, over, across, and upon said lands so situated in Township One and Township Two North, Range Sixteen West, for the purpose of mining, boring, or making other explorations thereon and removing therefrom such oil, mineral, gas, and petroleum, as may be found,—responsive, however, for such actual damages as may be caused by the grantor, its agent or assigns, in pursuit of such work upon said lands, to fences, buildings, crops, and merchantable timber thereon."[1]

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1. In *Conner* v. *Hendrix*, 194 Va. 17, 72 S.E.2d 259, 265, the Court said:

> "It is a well-settled rule of construction that inasmuch as the parties must have intended all the provisions and terms of a deed to have some meaning and be given some import, from the fact that the terms and provisions were actually inserted in the deed, a deed will be so interpreted as to make it operative and effective in all its provisions, if its terms are susceptible of such interpretation. Every word, if possible, is to have effect, for, it has been said, the deed, as the witness to the contract between the parties, should speak the truth, the whole truth, and nothing but the truth."

This deed was duly filed for record in Lamar County, Mississippi, and recorded in Book GG, page 515, and is Appendix "H" hereto. On said land there were located five gravel pits wherefrom, since acquisition, the purchasers have sold gravel, chiefly to the County. The land was reseeded to pine for reforestation. The Liquidation, since the deed, has challenged neither the disposal of the gravel nor the method of reforestation.

The Liquidation assumed to sell that reserved in the deed to Tatum and in bidding therefor, Sabine Royalty Company made a better bid initially than did the Respondents, who thereupon, in Cause No. 202-253, Civil District Court of Orleans Parish, Louisiana, filed an Opposition wherethrough they succeeded in acquiring for $215,190.00 that described in the judgment of the Court and in the deed to them as, R. 113:

> "100% Mineral Interest in 8,788.67 acres, more or less in Lamar County, Mississippi, reserved from sale to W. S. F. Tatum by act of sale passed before A. P. Miceli, Notary Public, on December 30, 1937, recorded in Land Deed Record Book G. G., pages 515-522, in the office of the Chancery Clerk, Lamar County, Mississippi."

Thereafter, Respondents advised Petitioners that this deed so thus obtained and delivered admeasured their mineral interest.

The Atomic Energy Commission condemned the Tatum Salt Dome for nuclear purposes and had thereat an explosion. The Petitioners claimed under their deed a fee, except that reserved as above set forth, and admitted Respondents owned the "oil, mineral, gas and petroleum"; but Respondents challenged that construction, whereupon, in the Chancery Court of Lamar County, Mississippi, Petitioners, basing their rights under the deed recorded in

Book GG, page 515, sought confirmation. Pursuant thereto Respondents answered, admitted the execution of the deed recorded in Book GG, page 515, but assumed to claim, pursuant to the terms of Petitioners' deed, as a reservation to the Liquidation, all mineral rights and to that end Respondents filed a cross-bill in the Chancery Court seeking relief. After trial therein, the Chancellor entered a decree wherein he adjudged, R. 153:

> "IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the said complainants, as above named, be and they are hereby declared to be the true and lawful owners in fee simple of all the minerals and mineral rights, other than oil, gas and other hydrocarbons, in, on and under the following described lands * * *."

Being aggrieved thereat, Respondents appealed to the Supreme Court of Mississippi wherein there was rendered the judgment which assumed to incorporate as the reservation made in the 1937 deed not that hereinbefore quoted but "all the minerals and mineral rights, including oil, gas and other hydrocarbons, sulphur, gravel, salt and all other minerals and mineral rights in, on and under the lands described". Petitioners asserted their rights both under the pleadings and in the evidence and these rights were accorded by the Chancellor. After the rendition of the Supreme Court judgment, Petitioners filed a Suggestion of Error which was overruled, R. 276, and the judgment became final on March 8, 1965, in the Supreme Court of the State of Mississippi.

Petitioners have, pursuant to the alleged transgression of their federally protected rights, sought review thereasto here.

F.

FEDERAL QUESTIONS, HOW AND WHEN RAISED

1. In the Pleadings. Hibernia Bank & Trust Company, a Louisiana corporation, became insolvent and was being liquidated by Louisiana in accordance with its Constitution and statutes through J. S. Brock, State Bank Commissioner, acting by R. N. Sims, Special Agent, and J. Edward McGuire, Liquidator; and Louisiana, in accordance with *Relf* v. *Rundle*, 103 U.S. 222, 26 L.ed. 337, (brought forward in *Crider* v. *Zurich Insurance Co.*, ... U.S. ....., 13 L.ed. 2d 641), assumed to sell therethrough to Tatum 8,788.67 acres of land in Mississippi under a general warranty reserving only "oil, mineral, gas and petroleum". The complaint thereasto averred, R. 10:

> "6. That being such owner and in possession, the panic of 1929 occurred and in accordance with the Constitution and laws of Louisiana, pursuant to its public policy, the said corporation was lawfully taken over for liquidation and distribution of amounts due to its creditors as more fully appears in the Civil District Court, Cause No. 202253, and thereover plenary jurisdiction was vested in accordance with the Constitution and laws of the United States and the State of Louisiana."

As Exhibit "B" the deed of the Liquidation was annexed and as Exhibit "A" the lease to the Atomic Energy Commission. These exhibits so annexed accurately admeasured Petitioners' rights if such rights were misstated in the pleadings. *McNeill* v. *Lee*, 79 Miss. 455, 30 So. 821; *Griffith's Mississippi Chancery Practice*, Section 192.

The Complaint prayed, R. 23:

> "* * * and that upon final hearing the title of complainants to the property in controversy, being

minerals and mineral rights except hydrocarbons, be quieted, approved and ratified, and that the claim of title of complainants to said property with right to use and enjoy it in manner and form as by law provided may be vouchsafed, and all adverse claims thereto be cancelled, annulled and for naught held; and for such other, further and general relief as in equity and good conscience may seem meet."

Respondents obtained title from the Liquidation under an order of the Civil District Court specifically limiting that conveyed to the aforesaid reservation and Respondents' deed so did, R. 113. Respondents' answer, while admitting the accuracy of the verbiage of the deed, sought to incorporate therein "all mineral rights" instead of "oil, mineral, gas and petroleum". Mississippi's Court assumed authority not only to erode "oil, mineral, gas and petroleum" but inserted "all the minerals and mineral rights, including oil, gas and other hydrocarbons, sulphur, gravel, salt and all other minerals and mineral rights in, on and under the lands described" and declared the Respondents to be the owners thereof notwithstanding the express provisions of Louisiana's statutes that the Liquidation should have "exclusive jurisdiction", *Revised Statutes* 6:386. When averring the validity of the deed, Petitioners claimed rights thereunder. The Liquidation was not an indispensable party; but when Respondents sought cancellation and reformation of the deed between Petitioners and the Liquidation, the Mississippi Court had no jurisdiction to adjudge cancellation without the Liquidation being a party. Compare *Mississippi Power & Light Co.* v. *Town of Coldwater,* 168 F.Supp. 463, Syl. 13, discussed on page 478; *Mallow* v. *Hinde,* 12 Wheat. 193, 198, 6 L.ed. 599, 600; and *Shields* v. *Barrow,* 17 How. 130, 15 L.ed. 158.

2. In the Evidence. At the trial Respondents offered no parol evidence whatsoever, but authenticated

copies of thirteen instruments—Exhibits 1 to 13—were sought to be introduced over Petitioners' objection whereby they sought to eliminate "oil, mineral, gas and petroleum" and incorporate "all mineral rights". As Exhibit 3, Respondents sought to introduce a copy of a petition in the United States District Court, Jackson Division, to appoint Ancillary Receivers in Mississippi. Though Petitioners had referred to this petition, yet still when Respondents sought to utilize it to effectuate this reformation, Petitioners very promptly objected primarily because "the laws of Louisiana, the Constitution and statutes provide for the liquidation of this bank", R. 110. There was a continuing objection to these proffered exhibits and despite the objection the Chancellor admitted them, except Nos. 11 and 12. Until the Supreme Court of the State of Mississippi had asserted that State's sovereignty could eliminate the specific power of Louisiana to liquidate, with deference, Petitioners never dreamed that such an action could be had with the Liquidation not before the Court.

3. In the Supreme Court. As Appellees, Petitioners demanded those rights to them adjudged by the Chancellor under the deed. That Court well knew that the deed was an unimpairable contract. *Fletcher* v. *Peck,* 6 Cranch. 87, 3 L.ed. 162; *Burke* v. *Southern P. R. Co.,* 234 U.S. 669, 58 L.ed. 1527. To reform the deed, it was a jurisdictional requirement that the parties thereto—the Petitioners and the Liquidation—should be before the Court and have a constitutional hearing, *Mallow* v. *Hinde,* 12 Wheat. 193, 198, 6 L.ed. 599, and *Shields* v. *Barrow,* 17 How. 130, 15 L.ed. 158, especially as the jurisdiction of the State Bank Commissioner to contract for Louisiana was delegated. In the Supreme Court of Mississippi, that Court undertook, with deference, not to "construe" the deed as a deed, as

was its duty under the Constitution, but to set up an "alleged ambiguity". There can be no doubt but that the letter of December 10, 1937, contains that thus quoted by Mr. Justice Brady, *Singer* v. *Tatum*, 171 So.2d 134, 138:

> "'(e) On behalf of our trust, *we, in accordance with our telephone conversation, will reserve all mineral rights upon or beneath the lands which we proffer to convey to you by warranty, situated only in Township 1 North and Township 2 North, Range 16 West, Lamar County, Mississippi, including with said reservation of the usual and customary reservation of ingress and egress rights upon said lands for mineral exploration and removed purposes.'*" (Italics ours.)

This was accepted tentatively upon December 21, 1937, R. 181. What happened between December 21st and December 30th, the record does not show, but on December 30, 1937, the same three parties—Tatum, Sims and McGuire—executed not the "proffered" deed but the deed as delivered which was accepted by Tatum as vesting that whereto he was constitutionally entitled.

Admitting, which we deny, that Mississippi's Court might construe under limitations, there is not a scintilla of evidence which would vouchsafe Mississippi's Court the right to delete that in the Deed and substitute in its room that in the judgment. When this attempted substitution was made, with deference, per se if not previously raised, there was a denial of Petitioners' basic constitutional rights. This is the more apparent in that initially the Reconstruction Finance Corporation, then dominated by Texas influence, realized oil and gas to be summum bonum; and, as a reservation was to be strictly construed against the Liquidation, the term "all mineral rights" might not include oil and gas because technically oil and gas are not minerals. 1A *Summers, Oil & Gas*, Perm. Ed., Section 135, p. 263:

> "* * * the word 'mineral' is not a definite term, and its meaning must necessarily depend upon the intent with which it is used. In a restricted and scientific use of the term, oil and gas are not minerals, but are hydrocarbon compounds. * * *."

See also 24 *Am. Jur.*, "Gas and Oil", Section 2; 38 *C.J.S.*, "Gas", Section 1; 58 *C.J.S.*, "Mines and Minerals", Section 2, p. 17. In *Burke* v. *Southern P. R. Co.*, 234 U.S. 669, 679, 58 L.ed. 1527, 1544:

> "* * * But, passing this seeming divergence in opinion, and assuming that, when subjected to a strictly scientific test, petroleum is not a mineral, we think that is not the test contemplated by the statute. It was dealing with a practical subject in a practical way, and we think it used the words 'mineral lands', and intended that they should be applied, in their ordinary and popular sense. * * *."

The *Burke* case, *supra*, is applied in *United States* v. *School Board, Prince George County, Va.*, D.C.Va., 221 F.Supp. 93, 99, and in *United States* v. *Sumter County School District*, D.C., S.C., 232 F.Supp. 945, 950.

Thus those who delivered the deed had altered "all mineral rights" to make assurance doubly sure and to be specific inserted "oil, mineral, gas and petroleum". "Mineral" here interlarded is explained in *Northern Pacific Railway Company* v. *Soderberg*, 188 U.S. 526; 47 L.ed. 575, and in *Witherspoon* v. *Campbell*, 219 Miss. 640, 69 So.2d 384, to make the hydrocarbon inclusion perfect. Whether "gravel" was included in the description "all mineral rights" was uncertain. Compare *Bambauer* v. *Menjoulet*, 214 Cal.App.2d 871, 29 Cal.Repr. 874, 95 A.L.R. 2d 839; *Bumpus* v. *United States*, C.A. 10, 325 F.2d 264; 95 *A.L.R. 2d* 843, "Clay, sand, or gravel as 'minerals' within deed, lease, or license". Gravel was to be the property of Petitioners and to clarify

the "all mineral rights" so as to allow the gravel to vest under the granting clause in Petitioners, the phraseology was made so clear as that, with deference, the Supreme Court of Mississippi could not construe it but had to destroy it when it awarded the gravel to Respondents. Further, when Respondents took their deed under the order of the Civil District Court, the description therein was as in the deed of December 10, 1937; and it is not pretended that the description "all mineral rights" had been completely deleted by "oil, mineral, gas and petroleum". Compare *Glasscock* v. *Farmers Royalty Holding Co.*, C.A. 5, 152 F.2d 537. Thus the Mississippi Court itself contravened the Constitution because the jurisdiction of the Louisiana Liquidation was exclusive and Mississippi's Court could not award Respondents after October 7, 1959, that which the Liquidation had not claimed up to that date.

4. In the Suggestion of Error. Petitioners' rights existed under the pleadings and proof and were insisted upon, but the first specific reference to the Full Faith and Credit Clause and the Fourteenth Amendment occurred in the Suggestion of Error thus, R. 259:

> "APPELLEES HAD CERTAIN RIGHTS UNDER THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION AND UNDER THE FOURTEENTH AMENDMENT, BOTH THE DUE PROCESS AND EQUAL PROTECTION CLAUSES."

These rights are set forth in full thereafter in the Suggestion of Error.

The manner wherein Petitioners asserted their constitutional rights had been in accordance with the uniform practice as we understood it. The Liquidation was situsedexclusively in Louisiana and not subject to the jurisdiction of Mississippi, *Pennoyer* v. *Neff*, 95 U.S. 714, 24 L.ed. 565; and yet if, with Mississippi's judgment still effective, relief

was sought in Louisiana, the Full Faith and Credit Clause would preclude relief. Compare *Fauntleroy* v. *Lum*, 210 U.S. 230, 52 L.ed. 1039; *Durfee* v. *Duke*, 375 U.S. 106, 11 L.ed. 2d 186. Thereby the solemn agreement of Louisiana would be violated by reason of this Mississippi decision and thereasto it would be as declared by Mr. Justice Black in *El Paso* v. *Simmons*, 379 U.S. 497, 13 L.ed. 2d 446, 465:

> "None of the other cases which the Court quotes or mentions in passing altered in any way the rule established in Fletcher v. Peck, supra, and adhered to in Blaisdell and thereafter, that a State may not pass a law repudiating contractual obligations without compensating the injured parties. Especially should this be true when, as in the case before us, the contractual obligation repudiated is the State's own. Compare Perry v. United States, 294 U.S. 330, 79 L.ed. 912, 55 S.Ct. 432, 95 A.L.R. 1335, with Norman v. Baltimore & O. R. Co., 294 U.S. 240, 79 L.ed. 885, 55 S. Ct. 407, 95 A.L.R. 1352. * * *."

Mississippi cannot reform Louisiana's obligations at all, and especially when Louisiana has performed in exact accordance with Petitioners' contention and directly contrary to Mississippi's judgment.

If we err as to the time at which the Federal questions were raised on the record, still when they had been thus raised, the reference in the Suggestion of Error was in time, the doctrine being set forth in *Saunders* v. *Shaw*, 244 U.S. 317, 320, 61 L.ed. 1163, 1165:

> "The question remains whether the writ of error can be maintained. The record discloses the facts but does not disclose the claim of right under the 14th Amendment until the assignment of errors filed the day before the chief justice of the state granted this writ. Of course ordinarily that would not be enough. But when the act complained of is the act of the supreme court, done unexpectedly at the end of the

> proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here. The defendant was not bound to contemplate a decision of the case before his evidence was heard, and therefore was not bound to ask a ruling or to take over precautions in advance. The denial of rights given by the 14th Amendment *need not be by legislation.* Home Teleph. & Teleg. Co. v. Los Angeles, 227 U.S. 278, 57 L.ed. 510, 33 Sup.Ct.Rep. 312. It appears that shortly after the supreme court had declined to entertain the petition for rehearing the plaintiff in error brought the claim of constitutional right to the attention of the chief justice of the state by his assignment of errors. We do not see what more he could have done."

Note that when the Supreme Court entered this judgment Petitioners could not add one further line to the record there, the Court being limited to appellate jurisdiction. *Brown* v. *Sutton,* 158 Miss. 78, 121 So. 835. Louisiana had to be represented.

In *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U.S. 673, 678, 74 L.ed. 1107, 1112, this Court said:

> "* * * The additional federal claim thus made was timely, since it was raised at the first opportunity. * * *"

And in *Missouri* v. *Gehner,* 281 U.S. 313, 320, 74 L.ed. 870, 875:

> "It is well settled that this court will not consider questions that were not properly presented for decision in the highest court of the state. Ordinarily it will not consider contentions first made in a petition to the state court for rehearing where the petition is denied without more. Citizens Nat. Bank v. Durr,

257 U.S. 99, 106, 66 L.ed. 149, 152, 32 Sup.Ct.Rep. 15. But here the company, at the first opportunity, invoked the protection of the Federal constitution and statute. It could not earlier have assailed the section as violative of the Constitution and laws of the United States."

Compare *American Surety Co.* v. *Baldwin,* 287 U.S. 156, 77 L.ed. 236; *Great Northern Railway Co.* v. *Sunburst Oil & Refining Co.,* 287 U.S. 358, 77 L.ed. 360; *Wilson* v. *Cook,* 327 U.S. 474, 90 L.ed. 793; *Herndon* v. *Georgia,* 295 U.S. 441, 79 L.ed. 1530.

REASONS FOR ALLOWANCE OF THE WRIT

This writ should be allowed for the following reasons:

1. The Supreme Court of Mississippi has decided federal questions in a way not in accord with applicable decisions of this Court.

2. Unquestionably plenary sovereignty rested in Louisiana to effectually liquidate all assets, including the 21,435.51 acres of land in Mississippi, and when Louisiana had conveyed the land under general warranty with a single reservation of "oil, mineral, gas and petroleum", this Court must draw herein the line when Mississippi has taken from Petitioners not only "oil, mineral, gas and petroleum" but also "all the minerals and mineral rights, including oil, gas and other hydrocarbons, sulphur, gravel, salt and all other minerals and mineral rights in, on and under the lands described". This judgment is much broader than Respondents claimed in their exhibits upon which their cross-bill was predicated, namely, "all mineral rights". There is not a scintilla of evidence to support this reformation to include "all the minerals". The ownership of the minerals qua minerals was not in proof and

could not be since exclusive jurisdiction was vested in the liquidation—hence not subject to judicial review.

As to gravel, the uncontradicted parol proof is that the Liquidation never claimed the gravel after the deed was delivered. The gravel was sold to the county for the most part for public roads.

The phrase "mineral rights" is the sole term in this record which could be incorporated, but, with deference, we challenge, as between Louisiana and Mississippi, the power of Mississippi to bind Louisiana when as to Louisiana there are covenants of warranty.

Mississippi does not possess the power to erode the full faith and credit due Louisiana and that done by Mississippi in deleting the verbiage inserted by Louisiana was a flagrant contravention, especially when the Liquidation in Louisiana has permitted Petitioners to dispose of the gravel these twenty years and not sought to realize on it for its trust. Compare *Crider* v. *Zurich Insurance Co.*, ... U.S. ....., 13 L.ed. 2d 641; *Olmsted* v. *Olmsted*, 216 U.S. 386, 54 L.ed. 530.

3. Mississippi's Court may not impair the sovereignty of Louisiana as to liquidating its banks. Plenary power thereasto is vouchsafed Louisiana and this Court must not allow Mississippi to obliterate the obligations of the State of Louisiana under its Constitution and laws whereasto Louisiana is the sole judge. This deed made by Louisiana was, under the decisions of this Court, an executed contract and the State was estopped, by having granted, to question the grant even if it desired so to do, which it has not. *Fletcher* v. *Peck*, 6 Cranch. 87, 3 L.ed. 162; *Burke* v. *Southern P. R. Co.*, 234 U.S. 669, 58 L.ed. 1527; *El Paso* v. *Simmons*, 379 U.S. 497, 13 L.ed. 2d 446, 459, 462, dissenting opinion, Mr. Justice Black.

4. Louisiana was not a party to the judgment rendered between Petitioners and Respondents and reformation without all parties contravenes both the Full Faith and Credit Clause and the Fourteenth Amendment.

Please here consider reasons assigned in "Federal Questions, How and When Raised", *supra*, and not reiterated to save prolixity.

ARGUMENT

I.

Under the Full Faith and Credit Clause, Did the Supreme Court of the State of Mississippi, at the Instance of Respondents, Have the Constitutional Power to Supersede That Expressly Done by the State of Louisiana, Its Officers and Courts, and Wrongfully Take from Petitioners That Which Had Been to Petitioners' Predecessor in Title Validly Conveyed and Warranted by the State of Louisiana in the Liquidation of Hibernia Bank & Trust Company, Namely, Gravel, Especially When for Twenty-Two Years Both Louisiana and Petitioners Were at One As to the Property Rights?

Herein, upon December 30, 1937, the State of Louisiana, acting according to its Constitution and laws for liquidating insolvent banks, executed a deed to W. S. F. Tatum for $140,000.00 cash wherein there was the single, express reservation as quoted in "Statement of the Case", *supra*. But more important still, said deed was ratified by the order of October 1, 1959, R. 161, and the deed made pursuant thereto on October 7, 1959, R. 113, to Singer, hereinafter quoted. That done in 1959 by the Liquidation, in exclusive administration, completely emasculates Justice Brady's reference to the correspondence—"all mineral rights". Mr. Justice Brady effectively admits that

if Petitioners' deed was initially questionable yet it was perfectly validated when Respondents petitioned to purchase. The Civil District Court authorized Respondents to so do and then Respondents accepted a deed specifically delimiting the reservation. Mr. Justice Brady said, quoting *Cummings* v. *Midstates Oil Corporation*, 193 Miss. 675, 9 So.2d 648, and *Grissom* v. *Anderson*, 125 Tex. 26, 79 S.W.2d 619, 622, in *Singer* v. *Tatum*, 171 So.2d 134, 146:

> "* * * "* * * On the contrary, a recognition of the lease was made in deeds executed by them in strict conformity with law, and the benefits arising therefrom accepted. By their acts in executing the royalty deeds above described, they gave the lease life. Their acts constituted a ratification of the lease. The purposes of the statutes have been fully met. The rights of the parties acquired thereunder became valid and binding. After they have ratified the Welch lease in the manner described above, it is not the policy of the law to permit a repudiation thereof." ' 193 Miss. at 699, 9 So.2d at 652, 653."

Thus the Liquidation completely deleted the reference to "all mineral rights" and not having passed to Respondents, Mississippi's Court could not award them.

In *Fletcher* v. *Peck*, 6 Cranch. 87, 3 L.ed. 162, the great Chief Justice established that a deed was an executed contract between the parties wherethrough an estoppel was wrought as to the grantor by that granted. Note *El Paso* v. *Simmons*, 379 U.S. 497, 13 L.ed. 2d 446, 459, 462, especially the dissenting opinion of Mr. Justice Black, and that by him declared. With deference, when, as here, Louisiana thus construed this contract consistently for more than twenty years, Mississippi may not, by parody of reasoning declared in *Crider* v. *Zurich Insurance Co.*, ... U.S. ....., 13 L.ed. 2d 641, compel Louisiana to repudiate its warranty and obligations.

Initially, eminent counsel for Respondents made their Point I in the Supreme Court of Mississippi the following:

> "THE RESERVATION OF ALL MINERALS WAS SO PLAIN AS TO ADMIT NO CONSTRUCTION."

Petitioners' Point I was:

> "UNDER THE DEED OF DECEMBER 30, 1937, W. S. F. TATUM TOOK ALL MINERALS EXCEPT HYDROCARBONS, WHICH WERE EXCLUSIVELY RESERVED TO HIBERNIA; AND THE TERMS OF THE DEED ARE SO EXPRESS AND EXPLICIT THAT THEREASTO THIS COURT MAY NOT CONSTRUE, BUT MUST CONFIRM TATUM'S TITLE."

Mr. Justice Brady, for the Court, disagreed with both and assumed to find an alleged ambiguity, with deference, wherethrough under the sovereignty of Mississippi he proceeded to supply the intention of Louisiana (who was not a party to the suit) so that therefrom that which had been "oil, mineral, gas and petroleum" in the deed of December 30, 1937, from that deed completely disappeared and "all the minerals and mineral rights, including oil, gas and other hydrocarbons, sulphur, gravel, salt and all other minerals and mineral rights in, on and under the lands described" substituted as at October 7, 1959.

Thus the Supreme Court of Mississippi, without restraint of the Louisiana Constitution and statutes, has assumed plenary jurisdiction as to that done in the State of Louisiana under its *Constitution*, Article 6, Section 18, under its statutes, *Revised Statutes* 6:386 and 6:401, and under the decisions of its Supreme Court, namely:

1. *Hiern* v. *Interstate Trust & Banking Co.*, 178 La. 998, 152 So. 684, 687. As to the sovereignty thus exercised by Louisiana and its courts, it is said:

"But if we are not entirely correct in our appreciation of the effect of Act No. 300 of 1910, the legislative intent is wholly removed from the realm of conjecture by the enactment of Act No. 111 of 1920. That act not only specifically prohibits the voluntary liquidation of an insolvent bank, but it also specifically prohibits any district court of the state to designate liquidators for such a bank. And the statute expressly declares that whenever a state bank is found by the bank examiner to be in an unsound, unsafe, and hazardous condition for the continuance of business, such bank shall be closed *'and its entire liquidation conducted in accordance with the provisions of Act No. 300 of the Acts of 1910* and any amendments thereto that may subsequently be enacted into law'. Section 1. *And the avowed 'object and purpose' of the act, as set forth in section 2, is to prevent any interference with the supervision and control of the bank examiner of the liquidation of the assets of an insolvent state bank.* * * *.

"The courts of other states have uniformly held under statutes similar to ours that *the jurisdiction of the bank commissioner is exclusive and not subject to interference by the courts.* * * *." (Italics ours, unless otherwise noted.)

2. Under *In re Liquidation of Hibernia Bank & Trust Co.*, 205 La. 890, 18 So.2d 330, 333, had the Reconstruction Finance Corporation been the owner of this property, the power of McGuire and Sims was paramount and no order of the Civil District Court was requisite, the Court thereasto saying:

"'* * * The State Bank Commissioner and the Liquidators have full authority to administer and conduct the liquidation proceedings, and only in certain rare instances are they required to secure the authority or approval of a court of justice. It is true that they are required to secure an order of Court to sell the bank's property, but this stock was not the bank's property. * * *.'"

Note that in the case at bar, the Supreme Court of Mississippi does not challenge the sale in fee to Tatum of 21,435.51 acres of land or the conveyance thereof. This record does not disclose whether the Hibernia or the Reconstruction Finance Corporation was the equitable owner thereof.

3. *In re Hibernia Bank & Trust Co.*, 203 La. 195, 13 So.2d 833.

4. *Dowling* v. *Canal Bank & Trust Co.*, 216 La. 372, 43 So.2d 763.

5. *Liquidation of Canal Bank & Trust Co.*, 211 La. 803, 30 So.2d 841.

See also *Interstate Trust & Banking Co.* v. *Jones County, Miss.*, C.A. 5, 77 F.2d 806.

The State of Louisiana, upon December 30, 1937, delivered the absolute conveyance under warranty of title to the land with a reservation. We reiterate, with confidence, our Point I in the Mississippi Court. This description was affirmed by the Civil District Court of Louisiana upon October 1, 1959 (*United States* v. *Heinszen*, 206 U.S. 370, 51 L.ed. 1098), at the instance of the State Bank Commissioner which had exclusive jurisdiction and certainly knew in manner and form that which it intended. In this connection, note:

1. Until 1959, the Liquidation had made, so far as the record shows, no effort to dispose of the reservation, but, while Sims, McGuire and Tatum lived, gravel was taken by Lamar County from the lands sold and payment made by the County to the Petitioners without objection by the Liquidation. The fact of this taking by Tatum, without protest, for twenty years was not denied. Compare *United States* v. *Singer Manufacturing Co.*, 374 U.S. 174, 10 L.ed. 2d 823; *United States* v. *Chavez*, 175 U.S. 509, 44 L.ed. 255,

followed in *Caruth* v. *Gillespie*, 109 Miss. 679, 68 So. 927, 929.

2. The Liquidation and Tatum filed this deed as written in the official records of Lamar County in Book GG, page 515, so that from 1937 until 1959 that assumed to be substituted by Mississippi's Court did not appear upon the public records; and not appearing, Tatum could, pursuant to Section 867, *Recompiled Mississippi Code of 1942*, have sold to a purchaser for value—in fact so did to the United States, R. 27.

3. The collateral contract of December 30, 1937, between Hibernia and Tatum expressly referred to this deed to Tatum as fait accompli. The same parties, McGuire and Sims, who executed the deed, and Tatum, who accepted delivery thereof as written, are those who had the correspondence as at December 10 and 21, 1937, upon which Mr. Justice Brady substantially based his opinion. McGuire and Sims certified their authority to do that in manner and form as done. Compare *Oregon* v. *Jennings*, 119 U.S. 74, 30 L.ed. 323; *Gunnison County Commissioners* v. *Rollins & Sons*, 173 U.S. 255, 43 L.ed. 689, 696. We appreciate there is a more favorable doctrine as to negotiable bonds, but here Sims and McGuire in the deed itself certified thereasto that there was a specific judgment authorizing that done; but Sims and McGuire did not attach that judgment, as they declared they had, and consequently when Tatum took the deed as tendered by them as perfect under their authority, he to this extent acted unadvisedly for not exacting from them that which they said they had done. But having left undone, the Louisiana law thereasto admeasures and if there be doubt the Supreme Court of Louisiana must determine. Compare *Louisiana Power & Light Co.* v. *Thibodaux*, 360 U.S. 25, 3 L.ed. 2d 1058; *England* v. *Louisiana State Board of Medical Examiners*, 375 U.S. 411, 11 L.ed.

2d 440; *City of Meridian* v. *Southern Bell Tel. & Tel. Co.*, 358 U.S. 639, 3 L.ed. 2d 562; *United Service Life Ins. Co.* v. *Delaney*, C.A. 5, 328 F.2d 483, cert. den. 377 U.S. 935, 12 L.ed. 2d 298, Mr. Justice Douglas dissenting.

4. Note the Liquidation in 1959 offered for sale the reservation presumptively as set forth in the deed of December 30, 1937, and invited bids. The Sabine Royalty Company outbid Singer. At that time, constructively, Singer knew the precise terms of the reservation recorded in Book GG, page 515, and further constructively knew, Petitioners being in possession and having so been for twenty years, that during that period they had made, without objection from the Liquidation, those disposals of gravel to the County, a public agency, and that the Liquidation had not claimed the right to collect for the gravel so thus removed during this entire period. As to notice, compare *Davis* v. *Stegall*, 246 Miss. 593, 151 So.2d 813. Thereupon Singer raised his bid in an opposition to $215,190.00, constructively knowing (a) the provisions contained in the deed, (b) that the collateral contract had treated it as fait accompli and (c) that the gravel had thus been sold. The application for the purchase by Singer made express reference to the book and page whereat the deed of December 30, 1937, was recorded. A petition for this sale was lawfully made, an order lawfully entered and a deed delivered by the Liquidation to Singer and in this deed so accepted by Singer it was expressly recited, R. 113:

> "KNOW ALL MEN BY THESE PRESENTS that the Hibernia Bank & Trust Company in Liquidation of the City of New Orleans, State of Louisiana, sometimes hereinafter referred to as 'Vendor', and herein represented by *J. W. Jeansonne, State Bank Commissioner, State of Louisiana, in charge of the Hibernia Bank & Trust Company in Liquidation and herein authorized by order of the Civil District Court for the*

Parish of Orleans, State of Louisiana, dated October 1, 1959, in the matter entitled 'In re: Liquidation of Hibernia Bank & Trust Company', No. 202-253 of the Docket of said Court, a certified copy of said order being attached hereto and made part hereof, has sold and conveyed and does by these presents sell, convey and deliver, in equal proportions, unto Singer-Fleischaker Royalty Company, a partnership * * *, sometimes hereinafter referred to collectively as 'Purchasers', their successors and assigns forever, subject to the terms, conditions and provisions hereinafter contained, the mineral interests of Vendor authorized to be conveyed and described in the aforesaid Order of October 1, 1959, which said mineral interests are situated in Lamar and George Counties, Mississippi, and described as follows:

MINERAL INTEREST

Lamar County, Mississippi

100% Mineral Interest in 8,788.67 acres, more or less, in Lamar County, Mississippi, reserved from sale to W. S. F. Tatum by act of sale passed before A. P. Miceli, Notary Public, on December 30, 1937, recorded in Land Deed Record Book G. G., pages 515-522, in the office of the Chancery Clerk, Lamar County, Mississippi.

* * *

"This sale is made and accepted for the consideration of Two Hundred Fifteen Thousand One Hundred Ninety ($215,190.00) Dollars, cash in hand paid to Vendor by Purchasers, Vendor hereby acknowledging receipt thereof and granting full discharge and acquittance therefor.

* * *

"This sale is made without warranty of any kind or nature whatsoever on the part of Vendor, not even as to the return of any part of the purchase price, but

with subrogation to all rights of warranty and other rights of Vendor."

No Respondent dared face cross-examination as to the foregoing provision of this deed.

5. Note the order whereasto full faith and credit must be vouchsafed, R. 161:

> "IT IS FURTHER ORDERED, that the opposition filed herein by Alex Singer, on September 25, 1959, as amended in open Court on the hearing of the application, be and the same is hereby maintained, and the State Bank Commissioner is herewith authorized and empowered to accept *the offer of Alex Singer to purchase for the price and sum of $215,190.00 the mineral interest* in Lamar and George Counties, Mississippi, hereinafter described, * * * on the terms and conditions, to-wit:
>
> "1. The sale of said mineral interests shall be without warranty of any kind or nature whatsoever on the part of the vendor, not even as to the return of any part of the purchase price, but with subrogation to all rights of warranty and other rights of the vendor.
>
> * * *
>
> IT IS FURTHER ORDERED that petitioner is authorized and empowered to execute and deliver all instruments, conveyances and other writings necessary and appropriate to effectuate the aforesaid sale to Alex Singer or his nominee or nominees. The mineral interests referred to hereinabove are described as follows, to-wit:
>
> MINERAL INTEREST
>
> Lamar County, Miss.
>
> 100% Mineral Interest in 8,788.67 acres, more or less, in Lamar County, Miss., reserved from sale to W. S. F.

Tatum by act of sale passed before A. P. Miceli, Notary Public, on December 30, 1937, recorded in Land Deed Record Book G.G., pages 515-522, in the office of the Chancery Clerk, Lamar County, Miss.

"TOWNSHIP 1 NORTH, RANGE 16 WEST: (MINERAL RIGHTS RESERVED).

Section 26: North Half of Southwest Quarter (N-1/2 of SW-1/4) 80 acres.

"TOWNSHIP 2 NORTH, RANGE 16 WEST: (MINERAL RIGHTS RESERVED).

* * *

"JUDGMENT READ, RENDERED AND SIGNED IN OPEN COURT ON OCTOBER 1st, 1959."

6. Respondents accepted delivery and duly recorded this deed. Their sole right to reform the deed of December 30, 1937, rests exclusively hereon. *Dupre* v. *Dupre,* La.Ct.App., 72 So.2d 589, citing *LSA-Civil Code,* Articles 1945 and 2276; *Gaston* v. *Mitchell,* 192 Miss. 452, 4 So.2d 892; *Holland* v. *Bass,* Miss., 45 So.2d 743. Singer accepted this deed and is bound by its terms under the civil law of Louisiana as well as the common law of Mississippi.

Under the five Louisiana cases above noted, the administrative execution of the Liquidation demanded full faith and credit.

This Court in *Relf* v. *Rundle,* 103 U.S. 222, 225, 26 Led. 337, 339, recognized the doctrine that Louisiana's liquidation statutes were constitutional and entitled to full faith and credit, saying:

"* * * He is an officer of the State, and as such represents the State in its sovereignty while performing its public duties connected with the winding up of the affairs of one of its insolvent and dissolved corporations. * * *."

See also *Crider* v. *Zurich Ins. Co.*, ... U.S. ....., 13 L.ed. 2d 641; and in *Durfee* v. *Duke*, 375 U.S. 106, 109, 11 L.ed. 2d 186, 190, this Court said:

> "The constitutional command of full faith and credit, as implemented by Congress, requires that 'judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such state . . . from which they are taken.' Full faith and credit thus generally requires every State to give a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it. 'By the Constitutional provision for full faith and credit, and the local doctrines of res judicata, speaking generally, become a part of national jurisprudence, and therefore federal questions cognizable here.' Riley v. New York Trust Co. 315 U.S. 343, 349, 86 L.ed. 885, 891, 62 S.Ct. 608."

Compare *Carroll* v. *Lanza*, 349 U.S. 408, 99 L.ed. 1183, 1189, dissenting opinion of Mr. Justice Frankfurter; *Clark* v. *Willard*, 292 U.S. 112, 78 L.ed. 1160; *Cates* v. *Allen*, 149 U.S. 451, 37 L.ed. 804; *Scott* v. *Neely*, 140 U.S. 106, 35 L.ed. 358.

Due to the location of these 8,788.67 acres in Mississippi, thereover the State of Mississippi unquestionably exercised sovereignty; but did Mississippi's sovereignty, as disclosed by this record, authorize that which was done by the Supreme Court of Mississippi in virtue of alleged conformity to Mississippi's laws and public policy? Compare *Lyle Cashion Co.* v. *McKendrick*, 227 Miss. 894; 87 So.2d 289. We are conversant with *Olmsted* v. *Olmsted*, 216 U.S. 386, 54 L.ed. 530, 533, which was approved in *Williams* v. *North Carolina*, 317 U.S. 287, 294, 87 L.ed. 279, 283. Footnote 5, thus:

> "Fall v. Eastin, 215 U.S. 1, 54 L.ed. 65, 30 S.Ct. 3, 23 L.R.A.(N.S.) 924, 17 Ann. Cas. 853; Olmsted v. Olm-

sted, 216 U.S. 386, 54 L.ed. 530, 30 S.Ct. 292; Hood v. McGehee, 237 U.S. 611, 59 L.ed. 1144, 35 S.Ct. 718. These decisions refuse to require courts of one state to allow acts or judgments of another to control the disposition or devolution of realty in the former. They seem to rest on the doctrine that the state where the land is located is 'sole mistress' of its rules of real property. See Hood v. McGehee, supra * * *, and the concurring opinion of Mr. Justice Holmes in Fall v. Eastin supra * * *."

Let the Court note that basically there is here for solution between the power of Louisiana and the power of Mississippi that most recently dealt with in the case of *Crider v. Zurich Insurance Co.*, ... U.S. ....., 13 L.ed. 2d 641, wherein there had been a Georgia compensation act which assumed to be exclusive as to remedy. Notwithstanding action was in an Alabama court for the injury done in Alabama, this Court reversed the District Court and the Court of Appeals and among other things therein said, p. 643:

"* * * In Carroll v. Lanza, 349 U.S. 408, 99 L.ed. 1183, 75 S.Ct. 804, Arkansas, the place where the injury occurred, was allowed to grant common-law damages even though Missouri, the home State, had a Compensation Act that purported to be exclusive. As we stated in that case:

" 'Missouri can make her Compensation Act exclusive, if she chooses, and enforce it as she pleases within her borders. Once that policy is extended into other States, different considerations come into play. Arkansas can adopt Missouri's policy if she likes. Or, as the Pacific Employers Insurance Co. case teaches, she may supplement it or displace it with another, insofar as remedies for acts occurring within her boundaries are concerned. Were it otherwise, the State where the injury occurred would be powerless to provide any remedies or safeguards to non-resident employees

working within its borders. We do not think the Full Faith and Credit Clause demands that subserviency from the State of the injury.' Id., pp. 413-414, 99 L.ed. p. 1189."

This Court adverted to the prior holding in *Bradford Electric Co.* v. *Clapper*, 286 U.S. 145, 76 L.ed. 1026, and then the majority assumed that thereasto there had been an erosion. As at present the jurisdiction of Louisiana as to Liquidation is exclusive; yet when the administration thereasto occurs in another State, the line as to full faith and credit has to be drawn through these proceedings in this Court. We note that thereasto there was a convincing dissent as to that which precedently was the law. Let it be specifically noted that under the Louisiana Constitution and decisions the administration of the Liquidation in Louisiana was exclusively statutory in virtue of Louisiana's sovereignty. and even this Court could not reverse it. Compare *Henry* v. *Mississippi*, 379 U.S. 443, 13 L.ed. 2d 408; *Jackson* v. *Denno*, 378 U.S. 368, 12 L.ed. 2d 908; *Stoner* v. *California*, 376 U.S. 483, 11 L.ed. 2d 856, op. Mr. Justice Harlan, p. 490.

If these 21,435.51 acres of land had been in Louisiana, there would have been no constitutional question, but that at issue is, being in Mississippi, how far may Mississippi impair the full faith and credit required by the Constitution. Frankly, we submit that on certiorari this Court may reverse and render; but if therein we err, with deference, the questions as to the civil law of Louisiana, as compared with the common law of Mississippi, require that the civil law be made paramount as to this transaction.

Basically that done in manner and form as done by the Commissioner of Banks is entitled to full faith and credit and should be so adjudged; but if therein we err, then that at issue is the administrative act evidenced by the deed of

December 30, 1937, made by R. N. Sims, Special Agent, and J. Edward McGuire, Liquidator, as opposed to the declaration contained in the letter of December 10, 1937, from the Liquidation to Tatum and quoted by Mr. Justice Brady, 171 So.2d 138:

> "'(e) On behalf of our trust, we, in accordance with our telephone conversation, will reserve all mineral rights upon or beneath the lands which we proffer to convey to you by warranty, situated only in Township 1 North and Township 2 North, Range 16 West, Lamar County, Mississippi, including with said reservation the usual and customary reservation of ingress and egress rights upon said lands for mineral exploration and removal purposes.'"

But, with deference, under *Hiern* v. *Interstate Trust & Banking Co.*, 178 La. 998, 152 So. 684, and all the other Louisiana decisions, the discretionary power to liquidate was vested exclusively in Sims and McGuire and they assumed to act upon December 30, 1937. If this Court cannot reverse and render, then the effect if any of that quoted by Mr. Justice Brady becomes strictly a question of Louisiana law, wherein McGuire and Sims on behalf of Louisiana, and Tatum on behalf of himself, prior to December 21, 1937, had made these declarations; but when the deed was delivered by those thus authorized by Louisiana to act, their action thus administratively taken was conclusive and not judicially reviewable, especially when, at the instance of Singer, ratification was had on October 1, 1959, by the order of the Civil District Court and on October 7, 1959, by the deed delivered to Singer solely in virtue of said order. Compare *Berman* v. *Parker*, 348 U.S. 26, 99 L.ed. 27, approved in *United States* v. *Twin City Power Co.*, 350 U.S. 222, 100 L.ed. 240, 245; *Poe* v. *Ullman*, 367 U.S. 497, 6 L.ed. 2d 989, dissenting opinion, 1005; *Seneca Nation of Indians* v. *United States*, C.A. 2, 338 F.2d 55, 57. See also

United States v. *Carmack*, 329 U.S. 230, 91 L.ed. 209. Mississippi's Court holds to precisely the same effect and does not allow judicial review of that done under the delegated power. Compare *State Board of Optometry* v. *Orkin*, ... Miss. ....., 162 So.2d 883; *California Co.* v. *State Oil & Gas Board*, 200 Miss. 849, 27 So.2d 548. This effort on the part of the learned Justice to thus exercise authority over clearly administrative action contravenes Sections 1 and 2, *Mississippi Constitution*. It is commonplace that full faith and credit must be given to the Constitution, statutes and judgments as they appear, but our contention is that under Sections 1738 and 1739, 28 *U.S.C.*, the actions taken by the Liquidation were "little laws", *United States* v. *Mersky*, 361 U.S. 431, 4 L.ed. 2d 423, or "statutes", *Arizona Grocery Co.* v. *Atchison, T. & S. F. R. Co.*, 284 U.S. 600, 76 L.ed. 515, and entitled to the same faith as the Constitution and judgments.

The order and deed whereunder Respondents hold (October 1959) were made solely as to the description contained in Book GG, page 515. Louisiana did not even mention that done twenty years before in the correspondence quoted by Justice Brady or the collateral contract; and when he sought to incorporate that which the Liquidation and the Louisiana Court had consistently excluded for more than twenty years, Mississippi's action contravened the Full Faith and Credit Clause. The Liquidation's jurisdiction as to the 21,435.51 acres remained exclusive and judicially untouchable.

We, with deference, submit that discussion of the evidence by the Mississippi Court, Exhibits 1 to 13, is not in any way herein competent or apposite and should not be embraced; but if the evidence in the record may be here judicially noticed, it must be construed in accordance with the law of Louisiana and not of Mississippi. For the con-

venience of the Court, to be looked at only if desired, we append Appendix "I".

By the deed of December 30, 1937, confirmed by the order of the Civil District Court on October 1, 1959, and the deed from the Liquidation to Singer, duly recorded, Louisiana had conveyed and warranted to Petitioners' ancestor the entire 21,435.51 acres, subject only to a reservation of the hydrocarbons to the Liquidation, and pursuant thereto had awarded this property in accordance with the law of Louisiana. Now contra to that done, Mississippi had adjudged that Respondents are the owners of "all the minerals and mineral rights, including oil, gas and other hydrocarbons, sulphur, gravel, salt and all other minerals and mineral rights in, on and under the lands described", which constitutes "land". Thus under Louisiana sovereignty the "land" has been conveyed to Petitioners and by Mississippi's assumed sovereignty, "land" (a segment of that conveyed by Louisiana) has been vested in Respondents so that an irreconcilable conflict exists between that done by Louisiana and that done by Mississippi. With deference, we submit that the judicial power impliedly, if not expressly, exists hereasto under Article III, Section II, *United States Constitution,* and the solution constitutionally can be had therethrough only by this Court. There is no agency, other than this Court, under the Constitution to declare the law and preserve the respective rights. Note the rights of the United States which may be affected adversely unless decision on the merits herein is had.

II.

Has There Not Been a Flagrant Violation of the Full Faith and Credit Clause and the Fourteenth Amendment, Whereasto This Court Is Obligated to Rectify, When the Deed of December 30, 1937, Conveyed All of the Land with a Reservation of "Oil, Mineral, Gas and Petroleum" and Mississippi's Court Rewrote That Reservation to Read "All the Minerals and Mineral Rights, Including Oil, Gas and Other Hydrocarbons, Sulphur, Gravel, Salt and All Other Minerals and Mineral Rights in, on and under the Lands Described" Without Louisiana Being in Any Way a Party to This Cause or to the Judgment Reforming Said Deed?

The record demonstrates that until October 7, 1959, the deed as written was satisfactory to the Liquidation and to Petitioners. At that date the Liquidation in a most suggestive conveyance assumed to sell that reserved in 1937 to Respondents—that and naught else. Said sale was without warranty and with no right to any return of the purchase money paid for any cause. Note the Chancellor granted relief and only the Respondents assumed to appeal from this adverse decree. There was no summons or severance. The Liquidation was not a party thereto. Whether as an agency of Louisiana it might be, we do not discuss further than to say it was not, and that adjudged by Mississippi's Court was not binding upon the Liquidation. Compare *Pennoyer* v. *Neff*, 95 U.S. 714, 24 L.ed. 565. The Supreme Court of Mississippi granted relief under a cross-bill whereto there were no defendants other than Petitioners so that the Mississippi judgment in favor of Respondents bound no persons individually other than Petitioners, if it bound them. Assuming that Respondents purchased under the provisions of Petitioners' deed, did not this work an estoppel? *Singer* v. *Tatum*, 171 So.2d 143, so holds. Still Mississippi's Court assumed to sever and divide

the deed executed by Louisiana to Tatum into two parts: Up to October 7, 1959, leaving it intact as written, but from and after October 7, 1959, inserting as the reservation to be taken from Petitioners' fee title "all the minerals and mineral rights, including oil, gas and other hydrocarbons, sulphur, gravel, salt and all other minerals and mineral rights in, on and under the lands described".

That the Mississippi Court did not cancel pro tanto the deed of December 30, 1937, cannot be questioned. This left that deed thus severed and divided, if Mississippi had, in virtue of the lands being in that State, constitutional authority thus to do. That its act was unconstitutional is, with deference, submitted to be beycnd doubt under the Supremacy Clause, Article VI, Cl. 2, *United States Constitution.* This Court in *Mallow* v. *Hinde,* 12 Wheat. 193, 198, 6 L.ed 599, 600, said:

> "We do not put this case upon the ground of jurisdiction, but upon a much broader ground, which must equally apply to all courts of equity, whatever may be their structure as to jurisdiction. We put it on the ground that no court can adjudicate directly upon a person's rights, without the party being either actually or constructively before the court."

Approved in *Hilton* v. *Atlantic Ref. Co.,* C.A. 5, 327 F.2d 217, 218. See *Chase National Bank* v. *Norwalk,* 291 U.S. 431, 78 L.ed. 894; and in *Shields* v. *Barrow,* 17 How. 130, 139, 15 L.ed. 158, 160, this Court said:

> "A bill to rescind a contract affords an example of this kind. For, if only a part of those interested in the contract are before the court, a decree of rescission must either destroy the rights of those who are absent, or leave the contract in full force as respects them; while it is set aside, and the contracting parties restored to their former condition as to the others. We do not say that no case can arise in which this may

be done; but it must be a case in which the rights of those before the court are completely separable from the rights of those absent, otherwise the latter are indispensable parties."

Approved in *Updegrave* v. *Reliance National Investors* Corp., C.A. 9, 337 F.2d 604, 605; *Tardon* v. *California Oil Co.*, C.A. 5, 323 F.2d 717, 722; *United States* v. *Aetna Casualty & S. Co.*, 338 U.S. 366, 94 L.ed. 171, 186; *Lumberman Mutual Cas. Co.* v. *Elbert*, 348 U.S. 48, 99 L.ed 59, 64. Compare 76 *C.J.S.*, "Reformation of Instruments", Section 70, p. 423; 45 *Am. Jur.*, "Reformation of Instruments", Section 93, p. 642.

Herein when this deed is sought to be severed and divided in time, the Liquidation, being a party thereto, must be afforded a constitutional hearing. *Morgan* v. *United States*, 304 U.S. 1, 82 L.ed. 1129. Without such a hearing, this Court will not proceed. Compare the declaration of Mr. Justice Curtis in *Dred Scott* v. *Sanford*, 19 How. 393; 15 L.ed. 691, 768, which was embodied into this Court's decisions by *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U.S. 379, 28 L.ed. 462.

Therefore, with inherent jurisdiction lacking in Mississippi's Court to do that done, there being a constitutional transgression, we advert to *Barney* v. *Baltimore*, 73 U.S. 280, 18 L.ed. 825, wherein there was a colorable transfer so that therein diversity was not. Our submission is that absence of an indispensable party occupies precisely the same limitation upon jurisdiction. Therein this Court said, 73 U.S. 288, 18 L.ed. 827:

"* * * But, in point of fact, that conveyance did not transfer the real interest of the grantors. It was made without consideration, with a distinct understanding that the grantors retained all their real interest, and that the deed was to have no other effect

than to give jurisdiction to the court. And it is now equally well settled that the court will not, under such circumstances, give effect to what is a fraud upon the court, and is nothing more. In the case of Smith v. Kernochen, 7 How. 216, this court said: 'The true and only ground of objection in all these cases is, that the assignor or grantor, as the case may be, is the real party in the suit, and the plaintiff on the record but nominal and colorable, his name being used merely for the purpose of jurisdiction. The suit is then in fact a controversy between the former and the defendants, notwithstanding the conveyance.' And the court cites McDonald v. Smalley, already mentioned; Maxfield's Lessee v. Levy, 4 Dall. 330; Hurst's Lessee v. McNeil, 1 Wash.C.C. 70.

"It is not possible to see how the case before us can be taken out of the principle here laid down. We are, therefore, of opinion that the circuit court had no jurisdiction of the case.

"It follows that the decree of that court, which, on its face, appears to be a dismissal of the bill on the merits, must be reversed, and the case remanded, with directions to that court to enter a decree dismissing the bill for want of jurisdiction, and without prejudice to plaintiff's right to bring any suit she may be advised in the proper court."

Approved in *Stevens* v. *Loomis*, C.A. 1, 334 F.2d 775, 777; *National Ins. Co.* v. *Tidewater T. Co.*, 337 U.S. 582, 93 L.ed. 1556, 1575.

Thus with this basic Federal question in this record, if Petitioners did not come to this Court on certiorari, but allowed the judgment of the Mississippi Court to stand, the effect thereof would be, notwithstanding this defect, that having had an opportunity to rectify the error and having neglected so to do, the fault lay with us and res judicata was our penalty. Compare *Angel* v. *Bullington*,

330 U.S. 183, 91 L.ed. 832. In *Sherrer* v. *Sherrer*, 334 U.S. 343, 350, 92 L.ed. 1429, 1436, this Court said:

> "This Court has also held that the doctrine of res judicata must be applied to questions of jurisdiction in cases arising in state courts involving the application of the full faith and credit clause where, under the law of the state in which the original judgment was rendered, such adjudications are not susceptible to collateral attack."

See also *Durfee* v. *Duke*, 375 U.S. 106, 11 L.ed. 2d 186.

Even if the Court should not agree, with deference, that the Federal questions were appropriately raised prior to the presentation in the Suggestion of Error, it is, with deference, submitted that this manner of raising the questions was appropriate in this extraordinary case. Compare *Boles* v. *Stevenson*, 379 U.S. 43, 13 L.ed. 2d 109, wherein after certiorari had been denied by this Court, Stevenson claimed a constitutional right and on habeas corpus this Court, reversing in part the Court of Appeals, held that Stevenson had a right to a hearing before the West Virginia court which could speak with authority as to the West Virginia law. See also *Jackson* v. *Denno*, 378 U.S. 368, 12 L.ed. 2d 908; *Henry* v. *Mississippi*, 379 U.S. 443, 13 L.ed. 2d 408. Unless, with deference, the same vigorous vindication of property rights is had, property will cease to be, with poverty superseding. The promise of Louisiana is, with deference, clear and obligatory, but Mississippi, interfering with Louisiana's sovereignty, has adjudged that Louisiana is not obligated in manner and form as its words indicate. Mississippi has sought and obtained erosion. It is beyond the power of Mississippi to rewrite and conclusively admeasure Louisiana's obligations. Note specifically that the petition and order for the deed of December 30, 1937, are not in the record and, with deference, Mr. Justice Brady is in error

in his declaration contra. Whether a petition and order were essential is for Louisiana, *In re Liquidation of Hibernia Bank & Trust Co.*, 205 La. 890, 18 So.2d 330, if the Reconstruction Finance Corporation were the equitable owner. Mississippi has assumed to guess, predicated upon that which does not appear.

Therefore, with our grantor, the Liquidation, obligated under this deed and this collateral contract and with an assignment to the Respondents admeasured by that reserved in our deed, unless we get relief herein our case is basically lost by reason of the fact that though we had the right under the Constitution, yet we could come to this Court only as a matter of grace and not of right. This Court has frequently declared that where certiorari is applied for and refused this Court does not thereby affirm the doctrine. In *United States* v. *Barnett*, 376 U.S. 681, 12 L.ed. 2d 23, there had been several writs of certiorari refused, but later the Court of Appeals certified the issue of jury trial vel non to this Court and this Court therein as to these writs so refused said in a footnote, p. 30:

> "* * * While this Court denied the petition for writ of certiorari to review that order, Mississippi v. Meredith, 372 U.S. 916, 9 L.ed. 2d 723, 83 S.Ct. 722 (1963), and while the issue is not before us now, the Court would not be foreclosed from passing on the jurisdictional question if and when it is properly presented here after the trial on the merits."

Thus the jurisdiction of this Court given by the Constitution for the benefit of Petitioners unquestionably arises and, with deference, is irrefutable. So being, if this Court be uncertain as to what the civil law in Louisiana happens to be, there is the recourse of *Louisiana Power & Light Co.* v. *Thibodaux*, 360 U.S. 25, 3 L.ed. 2d 1058;

Meridian v. Southern Bell Tel. & Tel. Co., 358 U.S. 639, 3 L.ed. 2d 562.

Petitioners find themselves bereft of that whereof they have been possessed for twenty years under a general warranty deed and unless the Liquidation may be brought into this litigation either in this Court or by direction of this Court, in Louisiana, Petitioners will not have that whereto they were and are constitutionally entitled.

We advert to *Shenandoah Broadcasting Co. v. ASCAP*, 375 U.S. 994, 11 L.ed. 2d 467, where there was an uncertainty as to the method of appeal and after a dismissal for want of jurisdiction, 371 U.S. 540, 9 L.ed. 2d 508, appellants having also appealed to the Court of Appeals, that Court likewise dismissed, 317 F. 2d 90; and then so that the party's rights might be preserved, this Court took jurisdiction and reversed and remanded the case to the Court of Appeals "for consideration on its merits". On a petition for rehearing, this Court amended its opinion by providing, 375 U.S. 994, 11 L.ed. 2d 468:

> "* * * 'The petition is therefore granted and the judgment is reversed and the cause remanded to the Court of Appeals for further proceedings in conformity with this opinion.'"

This was done so as not to deprive the appellee of a technical right to dismiss if the appeal had not been taken to the Court of Appeals in time. But, with deference, note the dissent of Mr. Justices Goldberg and Black who desired to preclude the technical question and have appropriate judicial action and thereasto said, 375 U.S. 996, 11 L.ed. 2d 469:

> "The Court has frequently held, in cases involving attempted direct appeals from three-judge District Courts to this Court, that 'where the question of juris-

diction was not obviously settled by prior decisions,' the Court will enter 'an order framed to save appellants their proper remedies.' Phillips v. United States, 312 U.S. 246, 254, 85 L.ed. 800, 806, 61 S.Ct. 480. See also Walling v. James V. Reuter, Inc., 321 U.S. 671, 676-678, 88 L.ed. 1001, 1005, 1006, 64 S.Ct. 826; Oklahoma Gas & Electric Co. v. Oklahoma Packing Co., 292 U.S. 386, 392, 78 L.ed. 1318, 1322, 54 S.Ct. 732; Gully v. Interstate Natural Gas Co., 292 U.S. 16, 19, 78 L.ed. 1088, 1092, 54 S.Ct. 565. * * *."

The Court will recollect that in *Gully* v. *Interstate Natural Gas Co.*, 292 U.S. 16, 78 L.ed. 1088, Gully appealed from a three-judge court which had assumed jurisdiction by reason of an alleged contract impairment and had decided the case in favor of Interstate. Upon reaching this Court, the Chief Justice sua sponte questioned the jurisdiction of the three-judge court holding that a single judge should therein have presided, saying, 292 U.S. 19, 78 L.ed 1091:

> "In this instance, relief cannot be afforded by treating the decree of the District Court as appealable to the Circuit Court of Appeals, notwithstanding the participation of three judges (cf. Healy v. Ratta, (C.C.A. 1st) 67 F.2d 554, 556), as the time for appeal to that Court has expired. In these circumstances, without passing upon the merits, the appropriate action is to reverse the decree below and to remand the cause to the District Court for further proceedings to be taken independently of Sec. 266 of the Judicial Code."

Upon such remand, the District Court awarded the appropriate relief previously vouchsafed by the three-judge court and the case was then appealed, 82 F.2d 145, and certiorari sought here and denied, 298 U.S. 688, 80 L.ed. 1407. Compare *Henry* v. *Mississippi*, 379 U.S. 443, 13 L.ed.

2d 408, Headnote 12; *United States* v. *Public Utilities Commission*, 345 U.S. 295, 97 L.ed. 1020.

We suggest that having unquestioned rights under the civil law of Louisiana, which, with deference, the Supreme Court of Mississippi has completely disregarded, this Court may, therefore, reverse and remand so that the Courts of Louisiana may fully adjudicate that whereasto their law is supreme, *Griffin* v. *County School Bd. of Prince Edward County*, 377 U.S. 218, 12 L.ed. 2d 256; *Henry* v. *Mississippi*, 379 U.S. 443, 13 L.ed. 2d 408, making all parties parties defendant, there being full declaratory rights in Louisiana, if, with deference, we are correct in our assumption that the sole reservation in the deed was "oil, mineral, gas and petroleum".

The Court will note that the causa causans was the Tatum Salt Dome wherein subsequently the Atomic Energy Commission has had a contaminating explosion. The United States obtained substantial rights from Petitioners as shown by the lease, Exhibit "A" to Petitioners' original bill, R. 27. Therethrough the United States may, for the public welfare, profit if it so sees fit. With deference, serious confusion could be wrought, if the United States elected to purchase, by this decision of Mississippi's Court. Mr. Justice Brady specifically noted the public interest in the opinion. The United States is a bona fide purchaser for value without notice, priming Mississippi's Supreme Court's decision attempting to incorporate that contained in the deed of December 30, 1937.

It will be noted, with deference, that we have not referred to *Moss* v. *Jourdan*, 129 Miss. 598, 92 So. 689; *Witherspoon* v. *Campbell*, 219 Miss. 640, 69 So.2d 384; and *Cole* v. *McDonald*, 236 Miss. 168, 109 So.2d 628, which, in the aspects presented by this petition, with deference, are not controlling.

III.

Do Not the Rights of the United States, under the Lease to the Atomic Energy Commission, Demand Certiorari in the Public Interest?

Upon the records of Lamar County, Book GG, page 515, the Petitioners owned the land subject to the hydrocarbon reservation. So owning, the United States purchased for value a lease whereunder possession was taken and the explosion had. In the lease, when Petitioners were the record owners, the United States obtained an option whereunder at its pleasure a purchase might be had thus:

> "6. It is hereby agreed and understood, notwithstanding any other provision or provisions of this agreement, that the Government will be permitted following the expiration or termination of this lease, if the Government so desires, to acquire outright from the Lessor, full title and ownership of any or all of the areas, within the leased premises, immediately surrounding the holes, excavations and/or shaft or shafts drilled or excavated by the Government and its contractors in connection with the Government's experimental program, together with permanent rights of ingress and egress to and from each such acquired area. Each such area surrounding a hole, excavation or shaft that may be so acquired shall in no event exceed 100 yards in diameter. It is further agreed that the Government will be permitted to acquire outright from the Lessor, full title to any area within the leased premises contaminated by radioactivity as a result of the Government's experiments, together with permanent rights of ingress and egress to and from each such acquired area. * * *."

A complexity will be noted in that in virtue of an acquisition made in 1959 Mississippi undertook to impair, with deference, by assuming to reform a deed made in 1937 when the United States was not in any way a party. The

path of Respondents to such reformation is well beset with insurmountable difficulties under Mississippi law. Compare *Turner* v. *Turner*, 241 Miss. 444, 130 So.2d 871, 875, wherein the Supreme Court of Mississippi said:

> "To secure the reformation of an instrument, the proof must establish the mutual mistake beyond a reasonable doubt. Harrington v. Harrington, 2 How. 701; Watson v. Owen, 142 Miss. 676, 107 So. 865; Rogers v. Clayton, 149 Miss. 47, 115 So. 106; Frierson v. Sheppard, 201 Miss. 603, 29 So.2d 726; J. J. Newman Lbr. Co. v. Robbins, 203 Miss. 304, 34 So.2d 196. In Watson v. Owen, supra, it was said that the burden grows heavier with the lapse of time."

And in *Harrington* v. *Harrington*, 2 How. 701, 718 (1838), the Supreme Court said:

> "There is no doubt but courts of equity will interpose to correct palpable mistakes, for the purpose of carrying into effect the intention of the parties where that intention is clearly shown, but the proof should be clear beyond a doubt, because, that it is better that a doubtful written instrument should stand, than that a doubtful provision should be substituted by parol testimony. * * *."

CONCLUSION

For the reasons above set forth, Petitioners pray that this Court grant this petition for writ of certiorari and review the judgment of the Supreme Court of Mississippi in this cause; and if certiorari be not appropriate, then that an appeal might be allowed and a request therefor pursuant to the statute is respectfully made.

As Appendix "J" to this Petition, we ask the Court to take judicial notice that A. Clayton James is the State Bank Commissioner of Louisiana and Joseph J. Cangia-

milla is Special Agent, under an order duly certified in accordance with the Acts of Congress of date April 7, 1965, and presumptively the Liquidation, Cause No. 202-253, still continues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Garner W. Green, one of the attorneys for the Petitioners herein and a Member of the Bar of the Supreme Court of the United States, hereby certify that I have this day served printed copies of the foregoing Petition for a Writ of Certiorari on the Respondents in the manner following:

1. By mailing 1 copy thereof in a duly addressed enyelope, with postage prepaid, to John C. Satterfield, Esquire, Yazoo City, Mississippi;

2. By mailing 4 copies thereof in a duly addressed envelope, with postage prepaid, to Frank T. Williams, Esquire, Satterfield, Shell, Williams & Buford, 340 First National Bank Building, Jackson, Mississippi; and

3. By mailing 1 copy thereof in a duly addressed envelope, with postage prepaid, to M. M. Roberts, Esquire, Citizens Bank Building, Hattiesburg, Mississippi.

I further certify that I have caused to be mailed, postage prepaid, forty (40) printed copies thereof to the Clerk, United States Supreme Court, Washington, D. C. 20530.

This the ..... day of May, 1965.

.....

GARNER W. GREEN
800 Electric Building
P. O. Box 1666
Jackson, Mississippi
One of the Attorneys for Petitioners

APPENDIX "A"

IN THE SUPREME COURT OF MISSISSIPPI

No. 43,258

JOE B. SINGER, ET AL.

v.

W. S. TATUM, ET. AL.

BRADY, JUSTICE:

This is an appeal from a decree of the Chancery Court of Lamar County, Mississippi adjudicating the appellees to be the owners of certain minerals other than hydrocarbons under 8,875.75 acres in Lamar County, Mississippi. From this decree this appeal is prosecuted.

On December 19, 1962 the appellees, complainants below, W. S. Tatum, and other members and heirs of the Tatum family, filed a bill in the Chancery Court of Lamar County, Mississippi for said confirmation and to determine whether the mineral exceptions and reservations in a certain deed executed under the authority of the District Court of the Parish of Orleans, Louisiana on December 30, 1937 by Hibernia Bank & Trust Company, in Liquidation, through its special agent and liquidator, to W. S. F. Tatum included sulphur, salt and other minerals as well as hydrocarbons, in the particular acreage. This area is commonly known as the Tatum Salt Dome, where much interest has centered because of the activity of the Federal Government in 1964 in the preparation and exploding of an underground atomic blast.

The bill to confirm the title to the minerals was brought against Joe B. Singer, R. H. Fleischaker, and other mem-

bers of these families, together with Singer-Fleischaker Royalty Company, a copartnership, all of the state of Oklahoma; Investors Royalty Company, a Delaware corporation domiciled in Oklahoma; Humble Oil & Refining Company, a Delaware corporation; Delhi-Taylor Oil Corporation, a Delaware corporation, each of which has the C T Corporation System of Jackson, Mississippi as agent for service of process; James S. Attaya, Allen C. Barton, Jess Bohon, resident citizens of Mississippi; Ruben W. Myronne, Jr., of Louisiana; and all persons having or claiming any adverse right, title or interest in the property involved, namely, all minerals and mineral rights with right of exploration, development, production, storage and disposition under subject lands in Lamar County, Mississippi, except the oil, gas and other hydrocarbon minerals therein as reserved in a certain deed dated December 30, 1937 from Hibernia Bank & Trust Company, in Liquidation, to W. S. F. Tatum of Hattiesburg, Forrest County, Mississippi, recorded in Book GG, page 515, in the office of the Chancery Clerk of Lamar County, Mississippi; unknown parties in interest, and unknown defendants, all hereinafter designated as defendants.

The Hibernia Bank & Trust Company of New Orleans, Louisiana owned the lands in question and all parties to this suit claim from the title of Hibernia Bank & Trust Company.

The decree adjudicated that the complainants below, appellees here, were the owners of sulphur, salt, and any and all minerals other than hydrocarbons in, on or under the lands involved in the exception or reservation of the deed from Hibernia Bank & Trust Company to W. S. F. Tatum, through whom the complainants below, appellees here, claim. This appeal is prosecuted by the appellants, who maintain that all minerals, including salt and sulphur, and

any minerals as well as hydrocarbons, were retained by the Hibernia Bank & Trust Company, in Liquidation, hereinafter called Hibernia, under the exception or reservation in its deed to W. S. F. Tatum. The appellants likewise acquired title from the same grantor, Hibernia.

Five assignments of error are urged by the appellants, the gravamen of which is that the chancery court erred in not recognizing the Louisiana District Court orders as controlling in the construction of the deed in question, and it also erred in adjudging the appellees, and not the appellants, to be the owners of the minerals and mineral rights in the lands involved, other than hydrocarbons.

The pertinent facts, in chronological order, as briefly as possible, are as follows:

On December 30, 1937 a deed was given by Hibernia, in Liquidation, to W. S. F. Tatum. The parts of the deed relevant to this suit are these: Title is warranted to W. S. F. Tatum to certain tracts of land situated in Lamar County totaling 21,433.51 acres, including everything of value thereon, therein, or appertaining thereto, (except: (a) Certain mineral reservations; (b) certain sixteenth section land leasehold and limitations of timber ownership thereon, as hereinafter disclosed) to-wit: Freehold lands hereby conveyed in Lamar County, Mississippi,

Township 1 North, Range 14 West:

. . .

Township 1 North, Range 15 West:

. . .

Township 2 North, Range 15 West:

. . .

Leasehold Lands and Limited Ownership of Timber or Things of Value Thereon:

In Township 1 North, Range 15 West
Section 16: Entire West Half
In Township 2 North, Range 15 West
Section 16: Entire
(Limited to unexpired term of 99 years)

. . .

Township 1 North, Range 16 West (Mineral Rights Reserved.)

. . .

Township 2 North, Range 16 West (Mineral Rights Reserved.)

. . .

"THE GRANTOR HEREIN Reserves unto itself, its agents or assigns, the oil, mineral, gas, and petroleum, on, in, or beneath all the lands herein conveyed which are situated in Township One North, Range Sixteen West, and in Township Two North, Range Sixteen West, in Lamar County, Mississippi; and the oil, mineral, gas, and petroleum, rights and ownership so reserved by this conveyance are restricted solely to the lands herein conveyed in said Townships One and Two North, Range Sixteen West, Lamar County, Mississippi. The grantor, on behalf of itself, its agents or assigns, hereby reserve the usual and customary rights of ingress and egress, over, across, and upon said lands so situated in Township One and Township Two North Range Sixteen West, for the purpose of mining, boring, or making other explorations thereon and removing therefrom such oil, mineral, gas, and petroleum, as may be found,—responsive, however, for such actual damages as may be caused by the grantor, its agent or assigns, in pursuit of such work upon said lands, to fences, buildings, crops, and merchantable timber thereon.

"ALSO, the aforesaid HIBERNIA BANK & TRUST COMPANY, IN LIQUIDATION—grantor herein, does fur-

ther hereby sell, convey, warrant, transfer and deliver, unto the aforesaid grantee herein—W. S. F. Tatum of Hattiesburg, Mississippi, the following described lands and property, including everything of value thereon, therein, or pertaining thereto, to-wit:

"FREEHOLD LANDS HEREBY CONVEYED IN LAMAR COUNTY, MISSISSIPPI.

"TOWNSHIP 1 NORTH, RANGE 14 WEST:

Section 11:	Northwest Quarter of Southwest Quarter (NW¼ of SW¼) less twenty (20) acres square—being Northwest part thereof.	20 Acres

"TOWNSHIP 1 NORTH, RANGE 15 WEST:

Section 13:	East Half of Northwest Quarter (E½ of NW¼) less a strip of land ninety-nine (99) feet wide off north end thereof.	77 Acres
	Total	97 Acres
	Grand Total . . .	21,435.51 Acres

"IT IS THE MUTUAL COVENANTS, PURPOSE AND INTENT, of all parties hereto or interested herein—whether identified as individual, trust, fiduciary, beneficiary, or corporate—that by this warranty and muniment of title the hereinabove described lands, including everything of value thereon, thereunder, or pertaining thereto, (except as to mineral reservations re lands hereby conveyed in Township One North, and Township Two North, Range Sixteen West, and subject to limitations re leasehold lands and timber ownership rights re lands in Section Sixteen, Township One North, Range Fifteen West, and Section Sixteen, Township Two North, Range Fifteen

West, as hereinabove disclosed and specified), are hereby conveyed and delivered to and conferred upon the grantee, W. S. F. Tatum of Hattiesburg, Mississippi,—by the grantor and/or grantors herein, to be received, held, and possessed, by the said grantee, his heirs and assigns, in fee simple forever.

"IN WITNESS WHEREOF, the HIBERNIA BANK & TRUST COMPANY, IN LIQUIDATION, herein represented by R. N. SIMS, Special Agent of and for J. S. BROCK, State Bank Commissioner for the State of Louisiana, and J. EDWARD McGUIRE, Liquidator, hereunto duly authorized, have caused this instrument and muniment of title to be executed and delivered in the name of and for and on behalf of their said trust—HIBERNIA BANK & TRUST COMPANY, IN LIQUIDATION, this the 30th day of December, 1937.

"HIBERNIA BANK & TRUST COMPANY, IN LIQUIDATION,

J. S. BROCK,

State Bank Commissioner for the State of Louisiana.

By s/ R. N. Sims

R. N. SIMS—SPECIAL AGENT,

By s/ J. Edward McGuire.

J. EDWARD McGUIRE—LIQUIDATOR."

There is no dispute between the parties to this cause insofar as title to the lands involved having passed from sovereignty to, and being vested in, Hibernia.

On July 7, 1933 W. S. F. Tatum, a creditor of Hibernia, as complainant, with others filed a complaint in the U. S. District Court of the Southern District of Mississippi, Jackson Division, against Hibernia, whereby an ancillary pro-

ceeding in Mississippi was commenced to aid in the liquidation of said bank—which cause continued until terminated by order of July 12, 1954.

On November 26, 1937 W. S. F. Tatum made an offer to R. N. Sims, President of Celtic Land and Improvement Company, to purchase its holdings in Lamar, Pearl River, and Stone Counties for the sum of $140,000, without any reservations. Apparently not known to Mr. Tatum, the Hibernia owned the lands and was in liquidation.

A reply to the Tatum letter was made on December 10, 1937 by R. N. Sims, Special Agent of Hibernia, and J. Edward McGuire, Liquidator, enclosing a copy of Tatum's letter to R. N. Sims, and Tatum's offer was accepted by the "trust" in behalf of Hibernia upon certain conditions and exceptions as set out therein. In this letter under "Conditions and Exceptions" we find paragraph (3) (d) and (e) to contain these stipulations and restrictions:

"(d) *Our trust in nowise owns the mineral rights* upon or beneath the lands described as East Half (E½) of Southeast Quarter (SE¼), and Southeast Quarter (SE¼) of Northwest Quarter (NW¼), Section 19, Township 1 North, Range 15 West, Lamar County, Mississippi, and, therefore, can convey no title to these mineral rights. (Italics ours.)

"(e) On behalf of our trust, *we, in accordance with our telephone conversation, will reserve all mineral rights upon or beneath the lands which we proffer to convey to you by warranty, situated only in Township 1 North and Township 2 North, Range 16 West, Lamar County, Mississippi, including with said reservation the usual and customary reservation of ingress and egress rights upon said lands for mineral exploration and removal purposes.*" (Italics ours.)

On December 13, 1937 W. S. F. Tatum replied by letter to Sims and McGuire, advising *"your conditions and exceptions mentioned in your letter of December 10, 1937 are satisfactory to us* and may we suggest that *as soon as you have the approval of the Reconstruction Finance Corporation and Civil District Court* for the Parish of Orleans that *you have proper deed made up* in favor of W. S. F. Tatum of Hattiesburg, Mississippi, . . ." (Italics ours.)

On December 30, 1937 the deed now controverted was executed and acknowledged.

On December 30, 1937 a collateral instrument was executed by both Hibernia and W. S. F. Tatum, which referred to two deeds of the same date in which Hibernia had made conveyances of lands to W. S. F. Tatum in Lamar and Pearl River Counties. By this collateral instrument the letter from Sims and McGuire of December 10, 1937 and Tatum's letter of December 13, 1937 to them in reply were expressly made a part of the supplemental contract *"to further define and simplify the covenants and agreements between the contracting parties."* (Italics ours.) Appellant urges that W. S. F. Tatum, by incorporating this letter of December 10, 1937, which embodied the mineral reservations limitation therein, concedes that, at the time, he realized that Hibernia *"will reserve all mineral rights upon or beneath the lands situated in Township 1 North and Township 2 North, Range 16 West, Lamar County, Mississippi."* (Italics ours.)

It is also important to note that special agent, Sims, and liquidator, McGuire, made the agreement *under the authority of an order of the Civil District Court* of the Parish of Orleans which was in charge of the liquidation. Appellants contend that the conveyance of Hibernia should not by any claim of construction be extended beyond the authority to convey and the power vested in them under

said agreement and order of said court. The appellants therefore urge that the reservation in the deed in question is by no means limited to "oil, gas, and petroleum." (Italics ours.)

On November 23, 1939 the attorney for W. S. F. Tatum enclosed a letter to United States District Judge S. C. Mize with a petition which he had signed for the ancillary liquidators of Hibernia in the state of Mississippi to be filed in equity in said court. The petition was filed on November 24, 1939, and paragraphs five and six of this petition contain the following significant stipulations:

"5. On December 30, 1937 the Hibernia Bank & Trust Company, in Liquidation, with the consent and approval of the Reconstruction Finance Corporation, sold to W. S. F. Tatum the properties described on 'Exhibit A' annexed hereto. In the said sale *all of the mineral rights in, on and under the said properties described on the said 'Exhibit A' were reserved by the Hibernia Bank & Trust Company, in Liquidation.*

"The Reconstruction Finance Corporation interposed no objections to the sale being made, *with the understanding that the Hibernia Bank & Trust Company, in Liquidation, would thereafter execute a deed of trust in favor of the said Corporation on the minerals and mineral rights retained in the sale.*

"6. The Hibernia Bank & Trust Company, in Liquidation, has, with the consent and approval of the Reconstruction Finance Corporation, sold to Ellis F. Ward the property described on 'Exhibit B' hereto annexed. In the said sale the Hibernia Bank & Trust Company, in Liquidation, *retained unto itself all the mineral rights, exclusive of*

gravel, in, on and under the said property described in said Exhibit.

"The Reconstruction Finance Corporation *interposed no objections to the said sale being made, with the understanding that the Hibernia Bank & Trust Company, in Liquidation, would thereafter execute a deed of trust in favor of the said Corporation on the mineral rights so retained.*"

The pertinent parts of the appellees' attorney's letter of November 23, 1937 are as follows:

"Dear Judge:

"Enclosed please find an application on behalf of the Ancillary Liquidators of the Hibernia Bank & Trust Company *for that which the Reconstruction Finance Corporation has deemed requisite for their protection.* As you know, this liquidation has actively been under the Banking Department in New Orleans but in order to prevent attachments and attempted preferences by citizens of Mississippi, this protecting Receivership was had. . . ."

On November 25, 1939 a decree was entered in the Southern District Court of Mississippi in accordance with the petition. This decree, among other directives, authorized and ordered special agent Sims and liquidator McGuire, ancillary receivers of Hibernia, *to join in the execution of deeds of trust in favor of the Reconstruction Finance Corporation, hereinafter called R. F. C., on "the hereinafter referred to mineral rights and land, . . ."*

The relevant parts of the decree are:

"It is therefore, ordered, adjudged and decreed by the Court that R. N. Sims and J. Edward McGuire, ancillary receivers herein, be and they are hereby authorized and *directed to join with Hibernia Bank & Trust Company,* in Liquidation, and the domiciliary liquidating officers in

the State of Louisiana *in the execution of a deed of trust or deeds of trust covering the retained mineral rights in, on and under the lands herein firstly and secondly described,* and . . ., *all in favor of the Reconstruction Finance Corporation as security for the payment of the hereinabove described indebtedness of the said Bank in Liquidation to the Reconstruction Finance Corporation.*"

The lands firstly and secondly described are the lands involved in the case at bar situated in Township 1 North, and Township 2 North, Range 16 West.

The order of July 12, 1954 of the United States District Court terminating the ancillary liquidation and releasing the ancillary receiver, J. Edward McGuire (Special Agent Sims having died) also *ratified, approved and confirmed the acts of Sims and McGuire relating to the execution of the deeds of trust to the mineral rights and land in favor of the R. F. C.* which are in litigation in the case at bar.

On July 31, 1940 approximately two years and seven months subsequent to the execution of the deed to W. S. F. Tatum by Hibernia, through the same agents in charge of the liquidation, *Mr. Tatum obtained, through the consent of the same Louisiana Court, an oil, gas and mineral lease dated July 31, 1940. This lease provided that lessee Tatum or assigns agreed: "To pay Lessor what under the circumstances shall be a reasonable money royalty for any other minerals, other than oil, gas and casinghead gas,* produced and marketed by Lessee from said land." *A provision of one-eighth royalty on sulphur, not exceeding one dollar per long ton, was therein incorporated.* The lease further provided: "If operations for drilling a well or *excavating a mine be not commenced on said land before the 30th day of April 1941, and prosecuted thereafter with diligence at or until completion, this lease shall terminate as to both parties.*" (Italics ours.)

Over a year later, on April 1, 1941, Mr. Tatum assigned the lease to the Freeport Sulphur Company. This assigned lease was filed for record on April 3, 1941 and recorded on April 9, 1941. *Appellants urge that the assignment by Tatum constitutes additional proof that Tatum recognized the rights of Hibernia to the sulphur and to other minerals,* other than oil, gas and casinghead gas.

On October 7, 1959 Hibernia sold and conveyed all the minerals in the subject lands to Singer-Fleischaker Royalty Company, a partnership, composed of Joe B. Singer, R. H. Fleischaker, et al., being the appellants herein. This interest amounts to 8,788.67 mineral acres, more or less, "*reserved from sale to W. S. F. Tatum* by act of sale passed before A. P. Miceli, Notary Public, on December 30, 1937 . . ." This sale of *all mineral interests* in subject lands was authorized to be conveyed by an order of the Civil District Court for the Parish of Orleans dated October 1, 1959 in cause number 202-253, "In re: Liquidation of Hibernia Bank & Trust Co." The purchase price of these minerals in Lamar and George Counties was $215,190.

Appellants' interest in the hydrocarbons, oil, gas and petroleum involved is not in dispute. Appellants admit that their interest therein is subject to the outstanding leases owned by Humble Oil Company. The sole question involved here is whether sulphur, salt, and all other minerals, including oil, gas and petroleum in addition thereto, subordinate to said leases, belong to the appellants under their aforesaid deed, or do they belong to the heirs, successors and assigns of W. S. F. Tatum, the appellees, by virtue of the deed to W. S. F. Tatum from Hibernia in Liquidation of December 30, 1937.

The briefs in this case represent several scores of years of study of the law and experience in its application. In the chancery court the briefs of counsel exceeded two hun-

dred pages, and the briefs of counsel in the case at bar exceed considerably the fifty pages to which all briefs are required to be limited. Over sixty cases have been cited respectively by counsel for both sides. This opinion, however, will deal solely with those questions which are requisite in disposing of this case. To treat and decide every collateral point urged by both sides in this case would require an opinion of great extended length, which is unnecessary.

The appellants and the appellees both maintain that the terms of the deed are so plain as to admit no construction thereof except to reserve, insofar as the appellants are concerned, all minerals in the grantor, Hibernia. Insofar as the appellees are concerned, it is contended that the deed is so plain as to show that all minerals except hydrocarbons were conveyed by Hibernia to Tatum. Both maintain that the terms of the deed are express and explicit; that this Court may construe from the deed itself the intention of the parties. The appellees maintain that the deed alone, when appropriately construed, vested title in Tatum to all minerals except the hydrocarbons. The appellants assert that it is obvious that all minerals were reserved by Hibernia, but appellants maintain, in addition, that if the deed should be determined to be ambiguous, then the contemporary document of clarification signed by Tatum as part of the whole transaction shows clearly that all minerals in the subject lands were intended to be and were reserved by Hibernia and were not conveyed to Tatum.

Our study of the record convinces us that this basic question is one of law and not of fact. The material facts as testified to in the chancery court and the pleadings are not in dispute, and therefore the determination of the basic issues resolves itself into an interpretation of the law governing the same. It is also urged by the appellants that

the Court should not construe the deed to be in direct conflict with the interpretation which the parties themselves made, and appellants urge that the construction which the parties to the deed gave shows conclusively that all minerals were reserved by the grantor, Hibernia.

Injected into the appellees' brief is the assertion that the statute of limitations had run against the court in the case at bar. This the appellants deny, and further urge that the receivers and bank liquidators had no authority and could not and did not convey more than intended by the court and authorized by the order thereof. The appellants further urge that the courts will give effect to each word in the deed and will adopt a construction consistent with the contemporaneous construction by the parties. This last contention is based upon the premise that the deed itself does not per se clearly and unmistakably reflect the intention of the parties. An analysis of the granting clause of the deed, the reservations, the pleadings and the exhibits convinces us that there is ambiguity in the deed. The deed could have been drawn and couched in other language which would have eliminated the possibility of this contest, but since the language which is used does admit various interpretations and constructions, it is safe to say that there is ambiguity in the deed, and this is borne out by the fact that the appellees, complainants below, brought suit in order that they might maintain and establish their interpretation of the words in the reservations of the deed. The contest made by the defendants below, appellants here, likewise is proof of the fact that the deed does not speak for itself and that there are grounds and potentials of different interpretations which have been placed upon this instrument by the parties to this suit.

The appellants conclude that the words "mineral rights reserved," "mineral reservations," "the reservation

of oil, mineral, gas and petroleum," and statements in similar vein, together with the reservation of ingress and egress for the purpose of mining, boring or making other explorations thereon, removing therefrom such oil, mineral, gas, petroleum, meant from the beginning, and should be construed to include, all minerals as well as oil, gas and petroleum. The ultimate goal of the appellees, on the other hand, is that such words should be either disregarded by interpretative reformation of the deed or strictly construed so as to mean hydrocarbons only, excluding from the reservation or exception all minerals in the technical sense and more particularly all solid minerals. Appellees contend that when construing the words separately or all together, it was the obvious intention of the grantor to reserve only oil, gas, petroleum and hydrocarbons, and that their interpretation correctly admits this conclusion.

Appellants urge further that if this Court looks only to the deed and to the petition and order which gave it life and validity, necessarily introduced by the appellees themselves as authority for their deed, the appellants must prevail, but assume, for the purpose of argument only, that this Court will find to be applicable the cases of Cole v. McDonald, 236 Miss. 168, 109 So.2d 628 (1959); Witherspoon v. Campbell, 219 Miss. 640, 69 So.2d 384 (1954); and Cummings v. Midstates Oil Corporation, 193 Miss. 675, 9 So.2d 648 (1942); and will adjudge that all or part of the other evidence is pertinent.

In the case at bar, it is pointed out by appellants that there are two distinct classifications of evidential matter in addition to the instrument itself: (1) The petition and decree of the District Court of the Parish of Orleans dated December 30, 1937, which gave this deed life and validity, and (2) the petition and decree of said court authorizing the execution of the supplemental and collateral agree-

ment, also dated December 30, 1937, between the grantor and and the grantee in the deed in question, all instruments being executed on the same day.

There is another factor which makes this case somewhat different from the average case, in that attached to and made a part of the petition and the supplemental and collateral agreement between the liquidators of Hibernia and W. S. F. Tatum were letters dated December 10, 1937 to Tatum from the liquidators, and his reply of December 13, 1937, all of which were made a part of the order of the district court authorizing the execution of the agreement *"to further define and simplify the covenants and agreements between the contracting parties."* (Italics ours.) These two simultaneous petitions, orders and written instruments are of particular importance since they constitute a part of the same transaction and therefore must all be construed together. The secondary type of evidence consists of all the other written documents and oral testimony, including subsequent actions of Tatum, his attorneys, and the liquidators of the bank, together with the execution and subsequent documents by Tatum and the liquidators and the filing of subsequent petitions and obtaining of subsequent orders, and all of the other evidence concerning the surrounding circumstances and the situation of the parties which shed any light upon the intent and understanding of the parties to the deed, as was true and held to be appropriate in Witherspoon v. Campbell, *supra*, and Cole v. McDonald, *supra*. The appellants rely more upon Cole v. McDonald, while the appellees rely upon Witherspoon v. Campbell. This latter case was decided on January 18, 1954, while Cole v. McDonald was decided on March 16, 1959, some five years later. In the Cole case we find the reservation to be in this language:

"Except that the grantor hereby excepts and reserves unto herself, her heirs and assigns, one-third (1/3) of the oil and gas *or other minerals or the proceeds therefrom,* which may be found or produced from, under, and on the above described lands, *together with the right of ingress and egress* for the purpose of *developing and extracting* said oil and gas and *other minerals,* and the right to use such part of the surface of said premises as may be necessary or convenient in the *development and extraction of said minerals.*" (Italics ours.) 236 Miss. at 173; 109 So.2d at 630.

This Court held that, under that exception and reservation, minerals of any kind or character, including bentonite, were included.

In the case of Witherspoon v. Campbell, 219 Miss. 640, 646, 647, 69 So.2d 384, 386, we said:

"It seems to be well settled in most jurisdictions that in determining the meaning of a conveyance or reservation of minerals, regard may be had not only of the language of the deed, but also to the situation of the parties, the business in which they were engaged and the substance of the transaction. 36 Am. Jur., Mines and Minerals, Sec. 31, page 302; Ib. Sec. 35, page 305; 58 C.J.S., Mines and Minerals, Sec. 155, page 323, where the latter text also states that: 'In doubtful cases, the meaning of the word "minerals" will be restricted to that given by the custom of the country in which the deed is to operate.'

"Considering the situation of the parties in the instant case, the business in which they were engaged and the substance of the transaction, it should be stated that the grantor was not engaged in construction work of any kind that would render of any use to her the strata of gravel which underlaid this tract of land, and that any attempt on her part to utilize the same would result in the destruction

or great impairment of the surface rights which she was conveying to the grantee in the deed of the land to him for farming purposes, and that since the first oil field in this state had been discovered in the county where this land is situated, five years prior to the execution of this deed of conveyance, the custom in the county where the deed was to operate was necessarily that of dealing in minerals as being oil, gas and other like minerals as distinguished from sand and gravel where no specific mention of the latter is made in a conveyance, and that since the grantor was likewise the attorney who prepared both the original and the correction deed which made no specific mention of sand and gravel, the conveyance should be construed most strongly against her, after the exclusion of incompetent oral testimony at the trial in regard to the alleged conversations had between the grantor and the grantee as to what was to be included in the deed.

"It also seems to be generally recognized that the word 'minerals' has no definite and certain meaning that can be attributed to it in all cases. Thompson on Real Property, Vol. 1, page 87; 1 A.L.R.2d Annotation, beginning at page 787. And this view is also supported by the text on Mines and Minerals in 36 Am. Jur. and 58 C.J.S. hereinbefore cited." Baker v. Nason, 236 F.2d 483 (5th Cir. 1956); Magnolia Textiles, Inc. v. Gillis, 206 Miss. 797, 41 So.2d 6 (1949); and Sumter Lumber Co., Inc. v. Skipper, 183 Miss. 595, 184 So. 296 (1938).

Appellants urge that the Cole case, *supra*, is the latest expression of this Court in Mississippi concerning the interpretation and meaning of exceptions and reservations covering minerals in the deed in the case at bar; that in the case at bar, the reservations cover minerals of any kind or character, specifically including salt. The objection of the appellees to the introduction of the letters, the petition

and the order is conclusively answered in the decision in the Cole case. The contention of the appellees that the contract of sale with its attachments, the petition and order of the court, and similar documents, and the other matters offered or alleged by the appellants are not admissible, is likewise refuted by the Cole case. The Cole case establishes the fact that such matters under situations as are present in the case at bar are admissible in evidence to remove or dissipate the ambiguity and to establish, if possible, the clear intention of the parties. The admissibility of the deed dated December 30, 1937, the construction of which is the subject matter of this proceeding, and the petition and order giving it life and validity, are certainly admissible. The contract of sale dated the same date, December 30, 1937, under which the deed was executed, and the letters attached thereto, including the letter from Hibernia dated December 10, and Mr. Tatum's acceptance of December 13, which letters said contract recites: "To further define and simplify the covenants and agreements between the contracting parties . . . are each and all annexed to and made a part of said collateral or supplemental contract," are likewise admissible. It cannot be doubted that the petition filed in the liquidation of Hibernia, praying for the order authorizing the execution of the deed, to which there are attached as exhibits the contract of sale dated December 30, 1937, with all attachments thereto, and a copy of the deed now being construed, are likewise admissible. The allegations of the answer to complaint and cross-bill, which were substantially admitted, that "there was production of both sulphur and salt near New Orleans, Louisiana, to the south and west. . . . There were huge salt mines at Avery Island and Jefferson Island in Louisiana, and the name Jefferson Island Salt was widely advertised in the area as to become a common household item," are also admissible. Proof showed that the salt un-

derlying the lands here involved was of a depth of approximately 1500 feet below the surface. The proof also shows undisputedly that the mining for salt could be carried on under the rights of ingress and egress reserved without the destruction of any substantial portion of the surface. The gravel which had been removed from the subject lands was from five small pits located at indefinite and unnamed points on the 8,875.75 acre tract here involved. All the subsequent leases, contracts, petitions and letters written by or in behalf of W. S. F. Tatum and the liquidators of the bank, and the order of the District Court of the Parish of Orleans, under the Cole case, were admissible. Cummings v. Midstates Oil Corporation, *supra*; Breard v. Pyramid Oil & Gas Co., Inc., 191 La. 420, 185 So. 303 (1938); Sheridan Oil Co. v. Cunningham, 186 Okla. 618, 99 P.2d 497 (1940); Earp v. Mid-Continent Petroleum Corp., 167 Okla. 86, 27 P.2d 855, 91 A.L.R. 188 (1933); Hinson v. Noble (Tex. Civ. App. 1938), 122 S.W.2d 1082; Ramage v. South Penn Oil Co., 94 W. Va. 81, 118 S.E. 162, 31 A.L.R. 1509 (1923); Hopkins v. Texas Co. (10th Cir. 1933), 62 F.2d 691, cert. denied 290 U.S. 629, 54 S.Ct. 48, 78 L.Ed. 547; and 16 Am.Jur., *Deeds* sec. 174 (1938).

The Cole case likewise vitiates the contention of appellees here asserted under the doctrine of ejusdem generis and under the maxim noscitur sociis. Just as in the Cole case the doctrine of ejusdem generis was not permitted, the doctrine is likewise inapplicable in the case at bar because it would have been in the teeth of the evident intention of the parties as is hereinafter pointed out. The application of the doctrine here would defeat the purpose sought to be accomplished by the use of the words, the meaning of which is under consideration. It would do violence to the manifest intention of the parties as represented by their deed and by their acts and would defeat the express purpose which the parties were seeking to accomplish.

There is a striking similarity between the facts in the Cole case and the ruling therein and the facts in the case at bar. The contemporaneous agreement in the Cole case is found in the words "reserves a one-third (1/3) interest in and to all gas, oil or other minerals that may be found or produced from the lands in Monroe County," and in a similar instrument dated March 20, 1928, in which reference was made to vesting an undivided one-third interest in the oil, gas and minerals thereon in the said L. B. Cole, followed by the words, "and the one-third undivided interest in and to said minerals in the said Cleo McDonald Young." In the case at bar the words used in the collateral agreement and its attachments, which were made a part thereof, are: *"We will reserve all mineral rights under and beneath the lands . . .* including the usual and customary *reservations of ingress and egress* rights upon said lands *for mineral exploration and removal purposes."* (Italics ours.) McNeese v. Renner, 197 Miss. 203, 21 So.2d 7 (1945); Moss v. Jourdan, 129 Miss. 598, 92 So. 689 (1922). The wording of the instruments before the court in the case at bar are as favorable, if not more so, to the appellants than the wording of the instruments before this Court in the Cole case. In the Cole case we held that there had been reserved oil, gas and other minerals of whatever kind or character, including the solid mineral bentonite, as follows:

"The authorities are generally agreed that the word 'minerals' has no definite or certain meaning. In the case of Witherspoon, et ux vs. Campbell, 219 Miss. 640, 69 So.2d 384, this Court said: 'It also seems to be generally recognized that the word "minerals" has no definite and certain meaning that can be attributed to it in all cases.'

"In 58 C.J.S., Mines and Minerals, page 17, we find the following: 'Mineral' is a word of general language,

and not per se a term of art or trade. It is not a definite term, and is used in so many senses, dependent on the context, that the ordinary definitions of the dictionaries throw but little light on its signification in a given case, and therefore, it is not capable of a definition of universal application, but is susceptible of limitation or expansion according to the intention with which it is used in the particular instrument or statute.

"In the case of Northern Pacific Railway Company v. Soderberg, 188 U. S. 526, the Court said: 'The word "mineral" is used in so many senses, dependent upon the context, that the ordinary definitions of the dictionary throw but little light upon its signification in a given case.'

"In 18 R. C. L., Mines, page 1094, it is said: 'The most reasonable rule is that each case must be decided upon the language of the grant or reservation, the surrounding circumstances and the intention of the grantor if it can be ascertained.'" 236 Miss. at 183, 109 So.2d at 635.

In the Cole case, *supra*, in deciding the intention of the parties, we concluded:

"We cannot conceive how the intention of the parties to vest in each of them an undivided one-third interest in the oil, gas and other minerals of whatever kind or character could have been more clearly and definitely expressed." 236 Miss. at 183, 109 So.2d at 635.

In the Cole case, *supra*, we discussed the Witherspoon case, *supra*, and the two cases are easily distinguishable. The granting clause of the deed conveyed and warranted to John Witherspoon, in that case, the service rights and all timber lying in, on or growing on said lands. The grantor in the deed claimed under the reservation all sand and gravel being in or on the land. We held in that case that the sand and gravel were not included in the reserva-

tion of the deed. The appellees undertake to find an analogy in that case and the case at bar. We do not think the two cases are analogous on their facts. In the Witherspoon case we pointed out that the sand and gravel ordinarily are not included in the grant or reservation of minerals or mineral royalty, although there is on the land involved sand and gravel susceptible of commercial production and use. We further pointed out in the Witherspoon case that the land conveyed was entirely underlaid by gravel and that the removal of gravel from the land would destroy the surface. We further pointed out that the conveyance there involved was executed approximately five years after discovery of oil and gas in Yazoo County, and that it was a matter of common knowledge that grantors and purchasers of minerals under conveyance or reservation of all minerals did not contemplate the inclusion of sand and gravel in the conveyance or reservation.

Insofar as the admissibility of the numerous instruments executed by W. S. F. Tatum during his lifetime and Hibernia in Liquidation is concerned, we have the case of Cummings v. Midstates Oil Corporation, *supra*, as a guide. In that case this Court stated:

"By these acts and agreements the parties have placed contemporaneous and practical construction on the Pendleton lease as including the ten acres. The rule is set out in 16 Am. Jur., page 536, Section 174, in these words: 'A deed which is ambiguous or uncertain may be definite and certain by the practical construction of the parties to it while in interest. The construction put on such a deed by the parties is an indication of their intention. Therefore, where the construction of a deed is doubtful, great weight is to be given to the construction put upon it by the parties, especially in the case of doubtful questions which must be presumed to be within their knowledge, and such prac-

tical interpretation of the parties themselves by their acts under a deed is entitled to great, if not controlling, influence.'

"In Sumter Lumber Co. v. Skipper, 183 Miss. 595, 184 So. 296, 298, 835, this court used this language: 'And when the parties have for some time proceeded with or under the deed or contract, a large measure, and sometimes a controlling measure, of regard will be given to the practical construction which the parties themselves have given it, this on the common sense proposition that actions generally speak even louder than words.'

"Such construction by the parties appears to carry much weight in oil and gas leases. Earp v. Mid-Continent Petroleum Corp., 167 Okl. 86, 27 P.(2d) 855, 91 A.L.R. 188; Sheridan Oil Co. v. Cunningham, 186 Okl. 618, 99 P.(2d) 497; Breard v. Pyramid Oil & Gas Co., 191 La. 420, 185 So. 303; Hinson v. Noble (Tex. Civ. App.), 122 S. W. (2d) 1082; Hopkins v. Texas Co., 10 Cir., 62 F. (2d) 691, certiorari denied 290 U. S. 629, 54 S. Ct. 48, 78 L. Ed. 547; Ramage v. South Penn Oil Co., 94 W. Va. 81, 118 S.E. 162, 31 A.L.R. 1509.

"But these subsequent conveyances represented that the ten acres were under the Pendleton lease, and the grantees therein acquired rights under and became parties to that lease. By their acts and conduct and contracts they adopted, ratified and confirmed the Pendleton lease with the ten acres included therein." 193 Miss. at 697, 698, 9 So.2d at 652.

In Grissom v. Anderson, 125 Tex. 26, 79 S.W.(2d) 619, 622 (1935), Frank and Taylor Anderson executed an oil and gas lease on lands to one Welch, and after subsequent transactions and transfers and assignments, other parties claimed the lease on the subject lands and the minerals

involved therein. In holding that the subsequent conveyances and recitals ratified and confirmed and gave life to the lease from Anderson to Welch which would not have been operative since it was not signed by their wives and was homestead property, the court said: "Under the law the Welch lease was inoperative as to Taylor and Frank Anderson and their wives, and the power to make it operative rested exclusively with them. They exercised that power freely and voluntarily. They did not repudiate the Welch lease. On the contrary, a recognition of the lease was made in deeds executed by them in strict conformity with law, and the benefits arising therefrom accepted. By their acts in executing the royalty deeds above described, they gave the lease life. Their acts constituted a ratification of the lease. The purposes of the statutes have been fully met. The rights of the parties acquired thereunder became valid and binding. After they have ratified the Welch lease in the manner described above, it is not the policy of the law to permit a repudiation thereof." 193 Miss. at 699, 9 So.2d at 652, 653.

In the light of the Cummings decision, turning to the subsequent acts of Mr. Tatum individually and through his attorneys, and the subsequent acts of the other parties to the instrument, the liquidators of Hibernia, through petitions and orders of the District Court of the Parish of Orleans, there was introduced as appellants' Exhibit 8 an order of the Louisiana court authorizing the execution of the lease by the liquidators to W. S. F. Tatum which was dated July 1, 1940. There was also introduced as an unnumbered exhibit of the appellees a copy of the lease from the liquidators to Mr. Tatum. The following are significant in connection therewith:

1. The order authorizing the execution of the lease containing the provision for a drilling program with the

condition that if more than ninety days should lapse between the completion or abandonment of *"one well or mine"* and the beginning of the operations for the drilling or excavating of another *"well or mine,"* the lease would terminate. It is also provided for the retention of the forty acres "around each existing producing *well or mine.*" (Italics ours.)

2. The order further set up the payment of *royalty on sulphur produced* from the land and also the payment of *a reasonable money royalty for any other minerals* other than oil, gas and casinghead gas produced and marketed by lessee from the land.

3. The lease provided that the lessor granted and leased to the lessee oil, gas, *sulphur and other minerals, all of the minerals* and *mineral rights* in, on and under the lands here involved.

4. It further provided the lease would remain in effect after the primary term so long as either oil, gas, *sulphur or other minerals* were produced from the lands.

5. The lease provided for royalty upon oil, gas and casinghead gas, *a separate royalty upon sulphur,* and also additionally provided that there should be paid *"a reasonable money royalty for any other minerals* other than oil, gas and casinghead gas produced and marketed by lessee from said lands." (Italics ours.)

6. It further provided that in the event oil, gas and minerals "covered by this contract are removed from wells *or excavations located on the above lands",* certain rights would accrue. (Italics ours.)

7. The lease further provided that the same would terminate unless "operations for drilling a well or *excavating a mine be not commenced* on said lands" before a date

named. Several other references are likewise made to *mines and excavations.* (Italics ours.)

The rules announced in Cummings v. Midstates Oil Corporation, *supra,* make the recitations of this instrument, entered into by the grantor and the grantees about two and a half years after the execution of the deed, controlling. *The mine or excavating of a mine is mentioned six times* in the lease and this certainly could not have been by accident, and therefore it was by design. Persons or companies *do not excavate for oil, gas and petroleum or for any type of hydrocarbons.* It is common knowledge that this type of production is realized by drilling, Mines are excavated only for solid minerals, such as salt, sulphur, gold, silver, iron, copper, etc. The record discloses that the salt was being mined by excavation in the general area of New Orleans, where the deed was executed, at the time of the execution thereof. Salt was discovered on this property under the authority of this particular lease. In addition, the repeated reference to *"a reasonable money royalty for any other minerals* other than oil, gas and casinghead gas," and the recitation that the lessor lease to the lessee oil, gas, sulphur and other minerals, all of the minerals and mineral rights in, on and under the lease lands described, constitutes a recognition by both the lessee and the lessor that the lessor had retained all of the minerals and mineral rights in addition to the oil, gas and casinghead gas, and to read or construe otherwise would be to delete, or nullify completely, the word "mineral" from the reservation of the deed. It is to be noted also that W. S. F. Tatum signed the lease. This is of significance, because he thereby affirmed the provisions thereof. It was he who had it recorded, including the petition on which it was based, which recites as an undisputed fact: "That the *petitioners are the owners of the mineral rights and interest upon the land situated in Lamar County,*

Mississippi, specifically described and identified upon the mimeographed exhibit attached hereto and made a part hereof." (Italics ours.) *It is to be noted that in this very deed the grantee, Mr. Tatum, had received 12,460 acres of land upon which the mineral rights were not reserved.* Apparently the grantor, Hibernia, desired to have the exploration made in the hope of obtaining royalties and receiving the consideration paid for the lease.

As we said in the Cummings case, *supra,* the law will presume that the contract was freely entered into by the parties without coercion or overreaching. While it is not absolutely necessary to observe, nevertheless it is of some significance that the attorneys now representing the appellees were the attorneys for Mr. Tatum at the time of the purchase from Hibernia. They were the attorneys with whom the receivers dealt, and they were attorneys for the R. F. C., and attorneys for the grantees and successors of Mr. Tatum, and have been since 1919. It is obvious, therefore, that these attorneys were required to construe the deed as written, the provisions as clearly set forth in the contemporary collateral and supplemental agreement, and the petition and order demonstrate that they were also construed by Mr. Tatum and Hibernia in the lease in question. The petition and order were introduced as Exhibits 4 and 5 to the petition of ancillary receivers of Hibernia filed November 25, 1935 in the receivership instituted in the District Court of the United States by Mr. Tatum, ancillary to the Louisiana receivership. This petition requested authority to join with the liquidators in the execution of the deed of trust to the R. F. C. *upon the minerals here involved,* and an order of the district court granted such authority. The following items are significant:

1. The ancillary receivership had been instituted upon the petition of Mr. Tatum, one of the creditors of Hibernia Bank, through their present attorneys, and the attorneys who were thereafter appointed attorneys for the ancillary receivers.

2. This petition recites the sale of the lands to Mr. Tatum on December 30, 1937. It further recites in the said sale: *"All the minerals, mineral rights in, on and under the said property described in Exhibit 8 were reserved by Hibernia Bank & Trust Company, In Liquidation."* (Italics ours.)

3. There is a recitation in the succeeding paragraph of the petition for the sale of certain other lands to Ellis F. Ward, followed by the reservation. In the said sale, Hibernia retained unto itself "all the mineral rights exclusive of gravel in, on and under the said property described in the said exhibit."

4. The order granted upon the petition recites that the liquidators had "sold W. S. F. Tatum the lands hereinafter first described *with the reservation of all the mineral rights* and sold to Ellis F. Ward, the lands herein secondarily described with the reservation of *all the mineral rights, exclusive of gravel.*" (Italics ours.) The petition and the order show that not only was it recognized that all mineral rights had been reserved in the sale to Tatum, but made a clear distinction between that sale and the sale to Ward, in which all mineral rights had been reserved with the exception of gravel.

The appellees claim their title through a deed from W. S. F. Tatum to W. O. Tatum, W. S. Tatum and F. M. Tatum, dated April 6, 1943. Under the numerous authorities quoted by counsel for the appellees in this case, who are the grantees in said deed, or their successors, the appellees cannot

claim any greater title than they received by this muniment of title which is one link in their chain of title. In this deed there is no mention of oil, gas and other minerals, or oil, gas and petroleum, or similar words. There is no limitation or purported limitation of reference to the deed by which W. S. F. Tatum received title. This deed included numerous lands in addition to the lands here involved, and it is significant for the following reasons:

1. The lands are described with the township and range centered and underlined, which is followed by description of the section or portion of section conveyed. The lands in Township 1 North, Range 16 West are described as follows: *Township 1 North, Range 16 West*: Section 26. N½ of SW¼, *less mineral rights.*

2. There were listed all the numerous lands in Township 2 North, Range 16 West below the following heading: *Township 2 North, Range 16 West, Mineral rights reserved.*

Appellants urge that this constitutes an additional recognition by Mr. Tatum, and thus the appellees, that the reservation *was of mineral rights generally* and not simply of hydrocarbons. The grantees accepted this deed with the reservations therein stated and are restricted thereby. In re Liquidation of Hibernia Bank & Trust Co., 205 La. 890, 18 So.2d 330 (1944).

Exhibit 9 of appellants was a copy of an assignment from W. S. F. Tatum to the Freeport Sulphur Company, which affected two distinct tracts of land, the first tract containing 2,440 acres therein particularly described, and the second tract containing 8,875.75 acres, being the lands in which the mineral rights are the subject of this suit. This instrument is significant for the following reasons: In the first tract, containing 2,440 acres, all but eighty acres were a part of the lands included in the deed from Hibernia to

Tatum, conveyed to him in fee simple, and the remaining eighty acres were apparently acquired from some other source. As to all such lands it is recited that, "Tatum granted and leased, subject to the conditions therein set forth and for the purposes therein named, to Freeport, the exclusive right to enter certain lands," and described them. This patently evidences the claim of Tatum to the ownership of the lands as to which no reservation was made and to the minerals therein, including the sulphur. But as to the 8,875.75 acres involved in this suit, this instrument executed by W. S. F. Tatum recites that Tatum has assigned to Freeport "that certain mineral lease dated July 31, 1940 executed by the State Bank Commissioner of the State of Louisiana . . . insofar as said lease pertains to sulphur . . . said lease granting to Tatum the exclusive right to enter certain lands therein described," setting forth the description of the lands here involved. This likewise is a clear recognition by Tatum of the fact that *his right to enter the lands to remove the solid mineral sulphur was by virtue of the lease from the liquidators and not under the claim of ownership.* The judgment of the Civil District Court for the Parish of Orleans in liquidation of Hibernia authorizing the execution of the deed to Singer and the deed itself are also significant for the reason that the order refers to the sale of "mineral interests", and both the order and the deed describe that which is conveyed, as follows: "*One hundred percent mineral interest in 8,788.67 acres,* more or less, in Lamar County, Mississippi, *reserved from sale to W. S. F. Tatum by act of sale passed before A. P. Mosele, Notary Public, on December 30, 1937,* recorded in Land Record Book GG, pages 515, 522, in the office of the Chancery Clerk of Lamar County, Mississippi." The record is silent insofar as any document being introduced by the appellees evidencing a construction by either Tatum or Hibernia, or by W. O. Tatum, W. S. Tatum, F. M. Tatum, that the ex-

ception and reservation in the original deed and the deed to the last three named persons was construed to cover or intended to cover only oil, gas and petroleum or other hydrocarbons.

Appellees cannot seriously object to the lower court's or this Court's consideration of the federal court orders, supplemental instrument, subsequent leases and federal court adjudication which shed light on the fact that all mineral rights were reserved and excepted in the sale of the subject lands to Tatum by Hibernia, because in the trial in the chancery court appellees urged that this be done when their objectives were served.

Moreover, appellees cite the case of Sumter Lumber Company v. Skipper, *supra,* which, as was hereinabove pointed out, authorized the consideration of situations, circumstances, conditions surrounding the parties at the time of the execution of the instrument, and to what, as may be fairly assumed, the contracting parties had in contemplation, to be looked to by the court where the language in the instrument (deed) is not clear and explicit. Appellees cite also from 18 R.C.L. *Mines* sec. 3, p. 1094 (1917), from which they quote as follows: "The most reasonable rule is that each case must be decided upon the language of the grant or reservation, the surrounding circumstances and the intention of the grantor if it can be ascertained." It will suffice to say that the execution of the deed did not obliterate or absorb the necessity for considering the letters and collateral agreement in determining the intentions of the contracting parties.

Insofar as the claim of adverse possession on the part of Mr. Tatum, his heirs and successors is concerned, the record wholly fails to establish the basic requirements essential to create title by adverse possession in the appellees to the minerals other than hydrocarbons for the

statutory period of time, irrespective of whether or not the statute of limitations could run against this property for the alleged reason that it was in custodia legis.

In conclusion, an objective analysis of the myriad contentions of the appellants and the appellees convinces us that they can be resolved into these simple irreducible minimums. The appellees contend that the appellants wish to expand the word "mineral" judicially so as to mean "all mineral rights," while the appellants contend that the appellees wish to shrink or contract the word "mineral" to where it means nothing, where it is eliminated entirely or becomes synonymous with the words "other hydrocarbons." This Court does not desire to do either, nor does it wish or have the authority to write a new contract for the contracting parties. Its sole objective is simply to determine what the intentions of the parties were when they entered into the contract, the deed in question. This Court is interested in what the Hibernia intended to convey and thought it was conveying and what Mr. Tatum thought Hibernia conveyed and what he actually received. The appellees strenuously objected on the hearing to the showing of the surrounding circumstances by the documentary evidence; they objected to the deed, the court petition, the orders, the supplement, the lease, the federal court petition and the order, claiming that these expanded the interpretation of the intention of the contracting parties, but when it was to their convenience or advantage they stated at the same trial that they desired "all the color in this we can get;" that they wanted "that the light be turned on from every possible angle and that is what I am trying to do." This is in contravention of the most reasonable rule which is urged and cited by the appellees, which admits, in the search for the intention of the grantor or the grantees, that surrounding circumstances,

conditions and matters should be considered where the meaning is ambiguous.

Considering all of the pleadings, the exhaustive briefs of counsel and the proof which is offered in this case, we reach the conclusion that Hibernia did reserve and did not convey to Tatum all the mineral rights in the land in controversy other than oil, gas and petroleum. We feel that this is reflected and shown by the intention of the parties, the grantor, Hibernia, and the grantee, Tatum; that this is shown by the intention of the Louisiana court on the basis of the petitions presented to it. It is shown by the deed, by the supplemental agreement, and by the federal court order adjudicating the very question, obtained under the petition signed by counsel who represented Reconstruction Finance Corporation, who had represented the appellees, and who had represented Mr. Tatum, the grantee. Furthermore, the prior letter to Tatum from Hibernia requiring the reservation of all the mineral rights in the 8,875.75 acres in controversy as a condition of the sale is also indicative of the intention of the grantor to reserve the mineral rights. The letter from Mr. Tatum stating that this mineral reservation was satisfactory and the bringing forward of those letters as a part of the agreement, so understood and approved by the Louisiana court, contemporaneously with the final completion of the transaction on December 30, 1937 convinces us that the intention of the parties was as claimed by the appellants. Beyond this, the intention is also reflected by the subsequent acts of Tatum, who sought and obtained the mineral lease in 1940, also based on the petition to the Louisiana court which was deemed advisable by Tatum and done for Tatum, which recited title to the minerals was vested in Hibernia, In Liquidation, or, technically, in the state of Louisiana bank commissioner, and the order thereon, ratifying and confirming the deed and lease, all of which were recorded in

Lamar County in April, 1941, and all of which were introduced in evidence here by the appellees themselves.

In conclusion and from all circumstances, evidence, pleadings and in conformance with the former decisions ot this Court, we hold that it is apparent that it was the intention of the grantor, Hibernia, to reserve and it did reserve all of its oil, gas, petroleum and other minerals under the subject lands. It is apparent that it was the intention of the Louisiana court, as shown by the deed, the supplemental agreement, the adjudication of this specific question, obtained by requisite petition, properly executed, and the order thereon. It is apparent that the R.F.C. so understood the mineral reservation as shown by the petition and the subsequent acts of Hibernia and R. F. C. It is apparent also that Mr. Tatum realized that Hibernia intended to and did reserve the minerals as shown by his letters and the collateral agreement, by his subsequent lease of all the minerals from Hibernia and his assignment of the lease to Freeport Sulphur Company, together with the stipulations as to the payment for minerals to be obtained thereunder, and finally by all his acts with the State Bank Commissioner of Louisiana, and the District Courts of Louisiana and Mississippi. It is also apparent that these minerals which Hibernia reserved were conveyed to the appellants, who now have title to them.

The learned chancellor erred in not so finding, and for the foregoing reasons the decree of the chancery court is reversed and judgment is entered here for the appellants.

REVERSED AND JUDGMENT ENTERED FOR APPELLANTS.

LEE, C. J., AND ETHRIDGE, GILLESPIE AND JONES, JJ., CONCUR.

APPENDIX "B"

MONDAY, JANUARY 25, 1965, COURT SITTING::::::

Joe B. Singer, Et Al

vs. #43,258

W. S. Tatum, Et Al

This cause having been submitted at a former day of this Term on the record herein from the Chancery Court of Lamar County and this Court having sufficiently examined and considered the same and being of the opinion that there is error therein doth order and adjudge and decree of said Chancery Court rendered in this cause dated June 27th 1963—be and the same is hereby reversed and this Court now, here, proceeding to render and enter the decree that should have been entered in the Court below doth order, adjudge and decree that the original bill of complaint in this cause filed by W. S. Tatum, F. M. Tatum, Mrs. Minnie T. Liggett, Mrs. Elizabeth T. McKinnon, Addison T. Tatum, Frederick E. Tatum, William W. Tatum, in his own proper person and also by Mrs. Ruth I. Tatum, guardian and next friend, Addison T. Tatum and Frederick E. Tatum, Trustees for William W. Tatum, Mrs. Ruth I. Tatum, guardian of William W. Tatum and M. M. Roberts, Addison T. Tatum, Mrs. Minnie T. Tatum, executors of the estate of W. O. Tatum, deceased, be and the same is hereby finally dismissed with prejudice.:

It is further ordered and adjudged that the Cross-complainants, (1) Singer-Fleischaker Royalty Company, a partnership composed of Joe B. Singer, R. H. Fleischaker, S. J. Singer, Alex Singer, Joe L. Singer and Adeline Singer Fleischaker (the proportionate interest of each of the above named partners being more particularly set forth in an agreement of partnership executed by and between them under date of September 1, 1957) and (2) Investors

Royalty Company, Inc., a Delaware corporation, be and they are hereby declared to be the true and lawful owners in fee simple in equal proportions, of all the minerals and mineral rights, including oil, gas and other hydrocarbons, sulphur, gravel, salt and all other minerals and mineral rights in, on and under the lands described below, lying and being situated in Lamar County, Mississippi, together with the usual and customary rights of ingress and egress over, across, and upon said lands for the purpose of mining, boring, or making other explorations thereon and removing therefrom such oil, gas, petroleum, sulphur, gravel, salt or other minerals as may be found, responsive, however, for such actual damages as may be caused by the mineral owner, its agents, or assigns, in pursuit of such work upon said lands, to fences, buildings, crops and merchantable timber thereon, said lands being described in the deed to said owners, by Hibernia Bank & Trust Company, In Liquidation, dated the 7th day of October, 1959, which is of record in Lease Book 45 page 491, as follows, according to the deed record aforesaid, to-wit:

MINERAL INTEREST

Lamar County, Mississippi

100% Mineral Interest in 8,788.67 acres, more or less, in Lamar County, Mississippi, reserved from sale to W. S. F. Tatum by act of sale passed before A. P. Miceli, Notary Public, on December 30, 1937, recorded in Land Deed Record Book G. G., pages 515-522, in the office of the Chancery Clerk, Lamar County, Mississippi.

TOWNSHIP 1 NORTH, RANGE 16 WEST:

Section 26: North Half of Southwest Quarter (N½ of SW¼) 80 Acres

TOWNSHIP 2 NORTH, RANGE 16 WEST:

Section 1: East Half of East Half (E½ of E½), Southwest Quarter of

	Southeast Quarter (SW¼ of SE¼), Northwest Quarter of Northwest Quarter (NW¼ of NW¼), North Half of Southwest Quarter (N½ of SW¼), and Southeast Quarter of Southwest Quarter (SE¼ of SW¼)	360 Acres
Section 2:	East Half of East Half (E½ of E½), Northeast Quarter of Northwest Quarter (NE¼ of NW¼), Northwest Quarter of Southwest Quarter (NW¼ of SW¼), South Half of Southwest Quarter (S½ of SW¼), Southwest Quarter of Southeast Quarter (SW¼ of SE¼), and Northwest Quarter of Southeast Quarter (NW¼ of SE¼) and Northeast Quarter of Southwest Quarter (NE¼ of SW¼) less thirty-four and four-tenths (34.4) acres, viz: "A strip eight and sixty-hundredths (8.60) chains wide of equal width off North side thereof."	405.6 Acres
Section 3:	Northwest Quarter of Northeast Quarter (NW¼ of NE¼), East Half of Northwest Quarter (E½ of NW¼), Northwest Quarter of Northwest Quarter (NW¼ of NW¼), and South Half of South Half (S½ of S½)	320 Acres
Section 4:	Southeast Quarter of Southeast Quarter (SE¼ of SE¼), Northwest Quarter of Northeast Quarter (NW¼ of NE¼), Northeast Quarter of Northwest Quarter (NE¼ of NW¼), and	

Southeast Quarter of Northwest Quarter (SE¼ of NW¼) less two and twenty-five hundredths (2.25) acres, viz: "beginning at NW cor. Southeast Quarter of Northwest Quarter (SE¼ of NW¼) Sec. 4, go East two and sixty-three hundredths (2.63) chains, go South eight and Fifty-nine hundredths (8.59) chains, go West two and sixty-three hundredths (2.63) chains go North Eight and fifty-nine hundredths (8.59) chains," also, Southeast Quarter of Southwest Quarter (SE¼ of SW¼) and Southwest Quarter of Southeast Quarter (SW¼ of SE¼), less seven and sixty-hundredths (7.60) acres, viz: "Commence at NE cor. Southwest Quarter of Southeast Quarter (SW¼ of SE¼), Sec. 4, go West two hundred (200) feet to and for the point of beginning, from thence go West twenty-four hundred forty (2440) feet to NW cor. Southeast Quarter of Southwest Quarter (SE¼ of SW¼), from thence go South one hundred seventy-five (175) feet, from thence go East thirteen hundred twenty (1320) feet from thence go East ..... degrees North eleven hundred twenty (1120) feet, more or less, to the aforesaid point of beginning." 230.15 Acres

Section 8: Northeast Quarter of Southeast Quarter (NE¼ of SE¼), Southeast Quarter of North-

	east Quarter (SE¼ of NE¼), and North Half of Southwest Quarter (N½ of SW¼)	160 Acres
Section 9:	South Half (S½), South Half of North Half (S½ of N½), and Northeast Quarter of Northeast Quarter (NE¼ of NE¼)	520 Acres
Section 10:	Northeast Quarter of Northeast Quarter (NE¼ of NE¼), West Half of Northeast Quarter (W½ of NE¼), Northeast Quarter of Northwest Quarter (NE¼ of NW¼), South Half of Northwest Quarter (S½ of NW¼), and Southwest Quarter (SW¼)	400 Acres
Section 11:	East Half of Northeast Quarter (E½ of NE¼), South Half of Northwest Quarter (S½ of NW¼), North Half of Southwest Quarter (N½ of SW¼), and Southwest Quarter of Southwest Quarter (SW¼ of SW¼)	280 Acres
Section 12:	Southeast Quarter (SE¼), Southwest Quarter of Northeast Quarter (SW¼ of NE¼), and West Half (W½)	520 Acres
Section 13:	South Half (S½), Southwest Quarter of Northeast Quarter (SW¼ of NE¼), and South Half of Northwest Quarter (S½ of NW¼)	440 Acres
Section 14:	Entire	640 Acres
Section 15:	Entire less Northeast Quarter of Northeast Quarter (NE¼ of NE¼)	600 Acres

Section 17:	Entire less Northeast Quarter of Northeast Quarter (NE¼ of NE¼)	600 Acres
Section 18:	South Half (S½), and South Half of North Half (S½ of N½)	480 Acres
Section 19:	East Half of East Half (E½ of E½), Northwest Quarter of Northeast Quarter (NW¼ of NE¼), and Northeast Quarter of Northwest Quarter (NE¼ of NW¼)	240 Acres
Section 22:	Northeast Quarter of Northeast Quarter (NE¼ of NE¼), North Half of Northwest Quarter (N½ of NW¼), Southwest Quarter of Northwest Quarter (SW¼ of NW¼), and South Half (S½)	480 Acres
Section 23:	East Half of Southeast Quarter (E½ of SE¼), Northeast Quarter (NE¼), and North Half of Northwest Quarter (N½ of NW¼)	320 Acres
Section 24:	East Half (E½), North Half of Northwest Quarter (N½ of NW¼), and South Half of Southwest Quarter (S½ of SW¼)	480 Acres
Section 25:	North Half of Northeast Quarter (N½ of NE¼)	80 Acres
Section 26:	East Half of East Half (E½ of E½), Northwest Quarter of Northeast Quarter (NW¼ of NE¼), and West Half (W½)	520 Acres
Section 27:	Southwest Quarter of Northeast Quarter (SW¼ of NE¼), Northwest Quarter (NW¼), North Half of Southwest Quar-	

	ter (N½ of SW¼), and Southwest Quarter of Southwest Quarter (SW¼ of SW¼)	320 Acres
Section 28:	North Half of Southeast Quarter (N½ of SE¼), and East Half of Northeast Quarter (E½ of NE¼)	160 Acres
Section 34:	Northeast Quarter of Northeast Quarter (NE¼ of NE¼), West Half of Northeast Quarter (W½ of NE¼), and Northeast Quarter of Northwest Quarter (NE¼ of NW¼)	160 Acres
	Total	8,795.75 Acres

Less and Except:

A parcel of land containing 7.08 acres, owned by Mrs. Maggie J. Saucier, as per Final Decree of Chancery Court of Lamar County, Miss. in the matter of Mrs. Maggie J. Saucier vs. Hibernia Bank & Trust Co., in Liq. et al., No. 4668, filed in Minutes of Chancery Court, Book 14, Page 81. Said 7.08 acres is more particularly described as follows:

A part of the NW¼ of NE¼ of Section 3, Township 2 North, Range 16 West, Lamar County, Mississippi, described as beginning at the Southeast corner of said NW¼ of NE¼ and run thence North on and along the East boundary of said NW¼ of NE¼ a distance of 906 feet to a point, run thence West parallel

with the South boundary of said NW¼ of NE¼ a distance of 281 feet to a point, run thence in a southwesterly direction on a straight line to a point on the South boundary line of said NW¼ of NE¼ that is 400 feet West of the Southeast corner of said NW¼ of NE¼, and run thence East along the South boundary of said NW¼ of NE¼ a distance of 400 feet to the point of beginning; the same containing 7.08 acres of land, more or less. 7.08 Acres

8,788.67 Acres

Such ownership is further adjudged to be effective from and after the date of the deed to said mineral owners (the Cross-complainants in the trial court) from Hibernia Bank & Trust Company, In Liquidation, dated the 7th day of October, 1959, above mentioned, but subject to all valid and existing leases, servitudes and other valid agreements of record affecting the above described properties executed by said cross-complainants or their predecessors in title, including particularly, but not limited to such lease interests as may be held by Humble Oil and Refining Company, and by the successors and assigns of Woodrow Hall as to the lease interest he acquired from Hibernia Bank & Trust Company, In Liquidation by lease dated July 6, 1959, of record in Book 45 page 351 of the said Lamar County deed records.

It is further ordered and adjudged and decreed that a final record be dispensed with but the Clerk of the lower court is hereby directed to record this decree on the land records of Lamar County, Mississippi, and to index the

same on the indices of said county the same as land deeds are indexed.

It is further ordered and adjudged that the appellants do have and recover of and from the appellees all of the costs of this Court and in the Court below to be taxed, for which and all of which let proper process issue.
MINUTE BOOK "BN" pages 271-274.

APPENDIX "C"

IN THE CHANCERY COURT OF LAMAR COUNTY, MISSISSIPPI

W. S. TATUM, ET AL., COMPLAINANTS

NO. 5815 VERSUS

JOE B. SINGER, ET AL., DEFENDANTS

Final Decree

THIS CAUSE this day came on for hearing before the Chancellor in vacation at Hattiesburg, Mississippi, on the bill of complaint of W. S. Tatum, F. M. Tatum, Mrs. Minnie T. Liggett, Mrs. Elizabeth T. McKinnon, Addison T. Tatum, Frederick E. Tatum, William W. Tatum in his own proper person and also by Mrs. Ruth I. Tatum, Guardian and Next Friend, Addison T. Tatum and Frederick E. Tatum, Trustees for William W. Tatum, Mrs. Ruth I. Tatum, Guardian of William W. Tatum, and M. M. Roberts, Addison T. Tatum and Mrs. Minnie T. Tatum, Executors of the Estate of W. O. Tatum, deceased, complainants, and the separate answer of Humble Oil and Refining Company, one of the defendants, and the separate answer of Jess Bohon, one of the defendants, and the separate answer and supplemental answer and cross bill of Joe B. Singer, S. J. Singer, Alex Singer, Joe L. Singer,

R. H. Fleischaker, Adeline Singer Fleischaker, Singer-Fleischaker Royalty Company, a partnership composed of the persons just named, and Investors Royalty Company, Inc., some of the defendants, and the answer of the above named complainants and cross defendants to said cross bill and the separate answer of Delhi-Taylor Oil Corporation, one of the defendants, and decree pro confesso against the remaining defendants, James S. Attaya, Allen C. Barton, Reuben W. Mayronne, Jr., and all other persons having or claiming any adverse right, title or interest in all minerals and mineral rights, except the oil, gas and other hydrocarbon minerals, in and under the lands in Township 1 North, Range 16 West, and Township 2 North, Range 16 West, Lamar County, Mississippi, as described in that certain deed from Hibernia Bank & Trust Company In Liquidation to W. S. F. Tatum, dated December 30, 1937 and recorded in Book GG at page 515 of the Land Deed Records of Lamar County, Mississippi, in the office of the Chancery Clerk of Lamar County, Mississippi, and upon oral and documentary evidence and testimony offered in open court, pursuant to the decree rendered by this Court at the March 1963 Term thereof on March 21, 1963, and pursuant to the further decree rendered by the Chancellor in vacation at Hattiesburg, Mississippi, on May 17, 1963, continuing this case and taking it under advisement for final decision and the rendition and entry of a final decree by the Chancellor in vacation at Hattiesburg, Mississippi, on this day. After hearing and considering the entire case and all of the evidence and testimony offered on behalf of all parties and considering the briefs filed by counsel in the case, the Court FINDS in favor of the complainants and that the prayer of the original bill of complaint of the said complainants should be sustained and granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the said complainants, as above named, be and they are hereby declared to be the true and lawful owners in fee simple of all of the minerals and mineral rights, other than oil, gas and other hydrocarbons, in, on and under the following described lands lying and being situated in Lamar County, Mississippi, to-wit:

IN TOWNSHIP 1 NORTH, RANGE 16 WEST:

Section 26: N½ of SW¼

IN TOWNSHIP 2 NORTH, RANGE 16 WEST:

Section 1: E½ of E½; SW¼ of SE¼; NW¼ of NW¼; N½ of SW¼; SE¼ of SW¼

Section 2: E½ of E½; NE¼ of NW¼; NW¼ of SW¼; S½ of SW¼; SW¼ of SE¼; NW¼ of SE¼ less a strip 567.6 feet wide off the North side thereof, containing 17.2 acres

NE¼ of SW¼, less a strip 567.6 feet wide off the North side thereof, containing 17.2 acres

Section 3: NW¼ of NE¼; E½ of NW¼; NW¼ of NW¼; S½ of S½

Section 4: SE¼ of SE¼; NW¼ of NE¼; NE¼ of NW¼; SE¼ of NW¼, less 2.25 acres beginning at Northwest corner of SE¼ of NW¼, East 173.58 feet, South 566.94 feet, West 173.58 feet and North 566.94 feet to point of beginning

SE¼ of SW¼; SW¼ of SE¼, less 7.6 acres beginning at Northeast corner of SW¼ of SE¼, West 200 feet to point of beginning, West 2440 feet to Northwest corner of SE¼ of SW¼, South 175 feet, East 1320 feet and

thence East ..... degrees North 1120 feet, more or less, to point of beginning

Section 8: NE¼ of SE¼; SE¼ of NE¼; N½ of SW¼

Section 9: S½; S½ of N½; NE¼ of NE¼

Section 10: NE¼ of NE¼; W½ of NE¼; NE¼ of NW¼; S½ of NW¼; SW¼

Section 11: E½ of NE¼; S½ of NW¼; N½ of SW¼; SW¼ of SW¼

Section 12: SE¼; SW¼ of NE¼; W½

Section 13: S½; SW¼ of NE¼; S½ of NW¼

Section 14: Entire

Section 15: Entire, less NE¼ of NE¼

Section 17: Entire, less NE¼ of NE¼

Section 18: S½; S½ of N½

Section 19: E½ of E½; NW¼ of NE¼; NE¼ of NW¼

Section 22: NE¼ of NE¼; N½ of NW¼; SW¼ of NW¼; S½

Section 23: E½ of SE¼; NE¼; N½ of NW¼

Section 24: E½; N½ of NW¼; S½ of SW¼

Section 25: N½ of NE¼

Section 26: E½ of E½; NW¼ of NE¼; W½

Section 27: SW¼ of NE¼; NW¼; N½ of SW¼; SW¼ of SW¼

Section 28: N½ of SE¼; E½ of NE¼

Section 34: NE¼ of NE¼; W½ of NE¼; NE¼ of NW¼.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all claims of all of the defendants, as above

named, to the said minerals and mineral rights, other than oil, gas and other hydrocarbons, in, on and under the above described land be and the same are hereby cancelled and held for naught; and the said title of the said complainants thereto be and the same is hereby confirmed and quieted against all of the said defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a final record be made of the proceedings in this case, which said final record shall consist of the pleadings, process and decrees in this case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs herein incurred be taxed against the defendants. Joe B. Singer, S. J. Singer, Alex Singer, Joe L. Singer, R. H. Fleischaker, Adeline Singer Fleischaker, Singer-Fleischaker Royalty Company, a partnership composed of the persons just named, and Investors Royalty Company, Inc., the same to be taxed by the Clerk of this Court, and for the collection of which execution or other apt process may issue.

SO ORDERED, ADJUDGED AND DECREED at Hattiesburg, Mississippi, on this the 7th day of JUNE, 1963.

/s/ Thomas D. Ott
CHANCELLOR

APPENDIX "D"

Title 28 *United States Code*:

Section 1257(3):

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, our commission held or authority exercised under, the United States."

Section 2101(c):

"(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

APPENDIX "E"

United States Constitution:

Article IV, Section 1:

> "Full Faith and Credit shall be given to each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Article III, Section 2:

> "The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

Fourteenth Amendment:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX "F"

Title 28 *United States Code*:

Section 1738:

"The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

"The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

Section 1739:

"All nonjudicial records or books kept in any public office of any State, Territory, or Possession of the United States, or copies thereof, shall be proved or admitted in any court or office in any other State, Territory, or Possession by the attestation of the custodian of such records or books, and the seal of his office annexed, if there be a seal, together with a certificate of a judge of a court of record of the county, parish, or district in which such office may be kept, or of the Governor, or secretary of state, the chancellor or keeper of the great seal, of the State, Territory, or Possession that the said attestation is in due form and by the proper officers.

"If the certificate is given by a judge, it shall be further authenticated by the clerk or prothonotary of the court, who shall certify, under his hand and seal of his office, that such judge is duly commissioned and qualified; or, if given by such Governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or Possession in which it is made.

"Such records or books, or copies thereof, so authenticated, shall have the same full faith and credit in every court and office within the United States and its Territories and Possessions as they have by law or usage in the courts of offices of the State, Territory, or Possession from which they are taken."

APPENDIX "G"

(a) Louisiana Constitution, Article 6, Section 18:

"At the expiration of the term of office of the Examiner of State Banks, there shall be appointed in lieu thereof by the Governor, by and with the consent of the Senate, a State Bank Commissioner who shall also be Supervisor of Homestead and Building and Loan Associations of the State. His term of office shall be four years. The Legislature shall fix his compensation, and define his powers and duties, which until otherwise provided by law, shall be the same as now vested in the Examiner of State Banks."

(b) Revised Statutes 6:386 (Act No. 300 of 1910):

"On taking possession of a corporation the commissioner may perform any acts and take such steps as may be necessary to conserve its assets, and he shall proceed to liquidate its affairs as set forth in this Chapter. He shall collect all moneys and claims belonging to it, and on the order of the district court of its domicile may sell or compound all doubtful debts. On like order he may sell all property of the corporation on such terms as the court directs."

(c) Revised Statutes 6:401 (Act No. 111 of 1920):

"Whenever a state bank, savings bank, or trust company is in an insolvent condition or whenever an examination by the Commissioner shows to his satisfaction that any such bank is in an unsound or unsafe condition to continue the banking business, the shareholders and board of directors shall not adopt any resolutions providing for the voluntary liquidation of the bank and the designation of liquidators by the district court, nor shall the district courts of the state issue any such orders or decrees. In all such cases the bank shall be closed and its entire liquidation conducted in accordance with the provisions of R.S. 6:383 through 6:395.

"Nothing in this Section prohibits or prevents any solvent bank from going into voluntary liquidation or effecting a consolidation with any other institutions on complying with the provisions contained in this Title, the object and purpose of this Section being to prohibit insolvent and failing banks from going into voluntary liquidation and thereby avoiding the supervision and control of the liquidation of its assets by the commissioner as provided for in R.S. 6:383 through R.S. 6:395."

(d) Article 2276, LSA-Civil Code:

"Neither shall parol evidence be admitted against or beyond what is contained in the acts, nor on what may have been said before, or at the time of making them, or since."

(e) Article 1945, LSA-Civil Code:

"Legal agreements having the effects of law upon the parties, none but the parties can abrogate or modify them. Upon this principle are established the following rules:

"First—That no general or special legislative act can be so construed as to avoid or modify a legal contract previously made;

"Second—That courts are bound to give legal effect to all such contracts according to the true intent of all the parties;

"Third—That the intent is to be determined by the words of the contract, when these are clear and explicit and lead to no absurd consequences;

"Fourth—That it is the common intent of the parties—that is, the intention of all—that is to be sought for; if there was a difference in this intent, there was no common consent and, consequently, no contract."

APPENDIX "H"

HIBERNIA BANK AND TRUST CO., IN LIQUIDATION, BY J. S. BROCK, STATE BANK COMMISSIONER ET AL,

TO

W. S. F. TATUM

STATE OF MISSISSIPPI
COUNTY OF LAMAR: : : : : :

FOR AND IN CONSIDERATION OF ONE HUNDRED FORTY THOUSAND ($140,000.00) Dollars, good and lawful money of the United States of America cash paid by W. S. F. Tatum of Hattiesburg, Mississippi, grantee herein, to Hibernia Bank and Trust Company, in liquidation, herein represented by J. S. Brock, State Bank Commissioner for the State of Louisiana, through his special agent, R. N. Sims, and J. Edward McGuire, Liquidator, in charge of the Hibernia Bank & Trust Company, in Liquidation of New Orleans, Louisiana, grantor herein, hereunto duly authorized under and by virtue of an order of the Honorable Civil District Court for the Parish of Orleans, State of Louisiana, rendered on the 30th day of December, 1937, in proceedings entitled-, "In re: Liquidation of Hibernia Bank and Trust

Company," No. 202,253, of the docket of said Court, a certified copy of which order is hereto annexed and made a part hereof, does hereby sell, convey, warrant, transfer and deliver unto the aforesaid W. S. F. Tatum of Hattiesburg, Mississippi, the following described lands and property, including everything of value thereon, therein, or appertaining thereto (Except (a) certain mineral reservations; (b) certain sixteenth Section land leasehold and limitation of timber ownership thereon; as hereinafter disclosed), to-wit:

FREEHOLD LANDS HEREBY CONVEYED IN LAMAR COUNTY, MISSISSIPPI.

Section 6:	Northwest quarter of Northwest quarter (NW-1/4 of NW-1/4	40 acres
Section 14:	East half (E-1/2) and East half of Southwest quarter (E-1/2 of SW-1/4)	400 acres
Section 25:	Northeast quarter of southeast quarter (NE-1/4 of SE-1/4)	40 acres
Section 26:	North half of Northeast quarter of Southeast quarter (N-1/2 of NE-1/4 of SE-1/4) Northwest quarter of southeast quarter (NW-1/4 of SE-1/4) and North half of Northeast quarter of south west quarter (N-1/2 of NE-1/4 of SW-1/4)	80 acres
Section 28:	North half of North half of southwest quarter (N-1/2 of N-1/2 of SW-1/4)	40 acres

TOWNSHIP 1 NORTH, RANGE 15 WEST.

Section 1:	South half of southeast quarter (S-1/2 of SE-1/4) Northeast quarter (NE-	

	1/4) and East half of Northwest quarter (E-1/2 of NW-1/4)	320 acres
Section 6:	Northeast Quarter of Northeast quarter (NE-1/4 of NE-1/4) and Southwest quarter of northeast quarter (SE-1/4 of NE-1/4)	80 acres
Section 8:	East half of southeast quarter (E-1/2 of SE-1/4)	80 acres
Section 19:	East half of southeast quarter (E-1/2 of SE-1/4) and southeast quarter of Northwest quarter (SE-1/4 of NW-1/4) (Less Mineral rights)	120 acres
Section 20:	Southeast quarter of southeast quarter (SE-1/4 of SE-1/4) and Northwest quarter of southwest quarter (NW-1/4 of SW-1/4)	80 acres
Section 25:	West half of northeast quarter (W-1/2 of NE-1/4)	80 acres
Section 29:	Northeast quarter (NE-1/4) and south half of Northwest quarter (S-1/2 of NW-1/4)	240 acres
Section 30:	Northeast Quarter (NE-1/4) and northeast quarter of Northwest quarter (NE-1/4 of NW-1/4)	200 acres
TOWNSHIP 2 NORTH, RANGE 15 WEST:		
Section 2:	East half of southwest quarter (E-1/2 of SW-1/4)	80 acres
Section 3:	Entire West half (W-1/2)	320 acres
Section 4:	Entire	640 acres
Section 5:	Northeast quarter of southeast quarter (NE-1/4 of SE-1/4)	

	West half of southeast quarter (W-1/2 of SE-1/4) southeast quarter of northeast quarter (SE-1/4 of NE-1/4) west half of northeast quarter (W-1/2 of NE-1/4), East half of northwest quarter, (E-1/2 of NW-1/4) and southwest quarter of northwest quarter (SW-1/4 of NW-1/4)	360 acres
Section 6:	Entire	640 acres
Section 7:	East half (E-1/2) East half of northwest quarter (E-1/2 of NW-1/4) and northwest quarter of southwest quarter (NW-1/4 of SW-1/4)	440 acres
Section 8:	North half of southeast quarter (N-1/2 of SE 1/4) southeast of northeast (SE-1/4 of NE-1/4), Northwest quarter of northwest quarter (NW-1/4 of NW-1/4) Northeast quarter of southwest quarter (NE-1/4 of SW-1/4) and south half of southwest quarter (S-1/2 of SW-1/4)	280 acres
Section 9:	Entire less Southwest quarter of southwest (SW-1/4 of SW-1/4)	600 acres
Section 10:	East half of southeast quarter (E-1/2 of SE-1/4) southwest quarter of southeast quarter (SW-1/4 of SE-1/4) southeast quarter of northeast quarter (SE-1/4 of NE-1/4) and northwest quarter (NW-1/4)	320 acres

Section 11:	West half of southeast quarter (W-1/2 of SE-1/4) and entire West half (W-1/2)	400 acres
Section 14:	Northwest quarter of southeast quarter (NW-1/4 of SE-1/4) west half of Northwest quarter (W-1/2 of NW-1/4) North half of southwest quarter (N-1/2 of SW-1/4) and southeast quarter of Southwest quarter (SE-1/4 of SW-1/4)	240 acres
Section 15:	Entire less East half of southeast quarter (E-1/2 of SE-1/4)	560 acres
Section 17:	South half (S-1/2) South half of North half (S-1/2 of N-1/2) and Northwest quarter of Northwest quarter (NW-1/4 of NW-1/4)	520 acres
Section 18:	South half of southwest quarter (S-1/2 of SW-1/4) Northeast quarter of southwest quarter (NE-1/4 of SW-1/4) and west half of southeast quarter (W-1/2 of SE-1/4) less (9) nine acres, Viz: "Commence NE cor. of southwest quarter of southeast quarter (SW-1/4 of SE-1/4) Sec. 18, go South 208.71 feet to point of beginning, go North 626.13 feet, go West 626.13 feet, go south 626.13 feet, go east 616.13 feet to point of beginning."	191 acres
Section 19:	East half of southeast quarter (E-1/2 of SE-1/4) southeast quarter of northeast quar-	

	ter (SE-1/4 of NE-1/4) northwest quarter (NW-1/4) west half of southwest quarter W-1/2 of SW-1/4) and southeast quarter of southwest quarter (SE-1/4 of SW-1/4)	400 acres
Section 20:	Northwest quarter of southeast quarter (NW-1/4 of SE-1/4) West half of northeast quarter (W-1/2 of NE-1/4) Northwest quarter (NW-1/4) North half of southwest quarter (N-1/2 of SW-1/4) and southwest quarter of southwest quarter (SW-1/4 of SW-1/4)	400 acres
Section 21:	Southwest quarter of southeast quarter (SW-1/4 of SE-1/4) Southeast quarter of Northeast quarter (SE-1/4 of NE-1/4) North half of northeast quarter (N-1/2 of NE-1/4) West half of Northwest quarter (W-1/2 of NW-1/4) and south half of southwest quarter (S-1/2 of SW-1/4)	320 acres
Section 22:	Northeast quarter of southeast quarter (NE-1/4 of SE-1/4) West half of Northeast quarter (W-1/2 of NE-1/4) and northeast quarter (NW-1/4)	280 acres
Section 23:	North half of southwest quarter (N-1/2 of SW-1/4)	80 acres
Section 26:	Southwest quarter of southeast quarter (SW-1/4 of SE-1/4)	40 acres

Section 27:	Northeast quarter of southeast quarter (NE-1/4 of SE-1/4) West half of southeast quarter (W-1/2 of SE-1/4) southeast quarter of northeast (SE-1/4 NE-1/4) West half of Northeast quarter (W-1/2 of NE-1/4) Northwest quarter (NW-1/4) and northwest quarter of southwest quarter (NW-1/4 of SW-1/4)	440 acres
Section 28:	East half of East half (E-1/2 of E-1/2) Northwest quarter of southeast quarter (NW-1/4 of SE-1/4) West half of Northeast quarter (W-1/2 of NE-1/4) and East half of northwest quarter (E-1/2 of NW-1/4) less eight and twenty four hundredths (8.24) acres, viz.: "Beginning at SW cor. Southeast quarter of Northwest (SE-1/4 of NW-1/4) Sec. 28, go East five and sixty five hundredths (5.65) chains, go North along public road thirty (30) chains, go west along Purvis and Baxterville road one and eighty three hundredths (1.83) chains, go south along land line twenty nine and thirteen hundredths (29.13) chains,"	351.76 acres
Section 29:	South half of southwest quarter (S-1/2 of SW-1:4)	80 acres
Section 30:	Northeast quarter of Northeast quarter (NE-1/4 of NE-	

	1/4) West half of Northeast quarter (W-1/2 of NE-1/4) and Northwest quarter (NW-1/4)	280 acres
Section 31:	East half of East half (E-1/2 of E-1/2) northwest quarter of southeast quarter (NW-1/4 of SE-1/4) West half of northeast quarter (W-1/2 of NE-1/4) South half of Northwest quarter (S-1/2 of NW-1/4) and northeast quarter of southwest quarter (NE-1/4 of SW-1/4)	400 acres
Section 32:	South half of south half S-1/2 of S-1/2) Northeast quarter of southeast quarter (NE-1/4 of SE-1/4) southeast quarter of Northwest quarter (SE-1/4 of NW-1/4) and North half of North half (N-1/2 of N-1/2)	400 acres
Section 33:	Southeast quarter (SE-1/4) Southwest quarter of Northeast quarter (SW-1/4 of NE-1/4) Southeast quarter of Northwest quarter (SE-1/4 of NW-1/4) and North half of southwest quarter (N-1/2 of SW-1/4)	320 acres
Section 34:	South half of Northeast quarter (S-1/2 of NE-1/4) southeast quarter of northwest quarter (SE-1/4 of NW-1/4) northwest quarter of northwest (NW-1/4 of NW-1/4) and southeast quarter of southwest quarter (SE-1/4 of SW-1/4)	200 acres

Section 35:	Southwest quarter of Northeast (SW-1/4 of NE-1/4) and northwest quarter of northwest quarter (NW-1/4 of NW-1/4)	80 acres
Section 36:	Southeast quarter of southwest quarter (SE-1/4 of SW-1/4)	40 acres

LEASEHOLD LANDS AND LIMITED OWNERSHIP OF TIMBER OR THINGS OF VALUE THEREON:

IN TOWNSHIP 1 NORTH, RANGE 15 WEST.

Section 16:	Entire West half (W-1/2)	320 acres

IN TOWNSHIP 2 NORTH, RANGE 15 WEST:

Section 16:	Entire	640 acres
	Total	12,462.76 acres

The grantor's conveyance and warranty of title to the lands above described as being in Section 16, township 1 North, Range 15 West, and in Section 16, township 2 North, Range 15 West, are hereby limited to the period of the unexpired term of the ninety nine (99) year lease thereto and thereon as reflected by the Minutes of the Board of Supervisors of the counties of Marion and Lamar, also records of deeds, and court decrees, including any and all other records pertinent thereto, now on file in the office of the Clerk of the Chancery Court at Columbia in Marion County, Mississippi, and at Purvis, in Lamar County, Mississippi. Also, the grantors' conveyance and warranty of title to the timber and things of value situated upon the aforesaid Sixteenth Section lands are hereby limited to the period of the unexpired term of the ninety nine year lease aforesaid and/or subsequent rights, title, interest and ownership thereof acquired by the grantor herein through

its predecessors in title or otherwise, as reflected by the Minutes of the Board of Supervisors of the Counties of Marion and Lamar, also records of deeds, and court decrees, including any and all other records pertinent thereto, now on file in the office of the Clerk of the Chancery Court at Columbia in Marion County, Mississippi, and at Purvis in Lamar County, Mississippi.

TOWNSHIP 1 NORTH, RANGE 16 WEST (MINERAL RIGHTS RESERVED)

Section 26: North half of southwest quarter (N-1/2 of SW-1/4) 80 acres

TOWNSHIP 2 NORTH, RANGE 16 WEST (MINERAL RIGHTS RESERVED)

Section 1: East half of East half (E-1/2 of E-1/2) Southwest quarter of southeast quarter (SW-1/4 of SE-1/4) Northwest quarter of Northwest quarter (NW-1/4 of NW-1/4) North half of southwest quarter (N-1/2 of SW-1/4) and southeast quarter of southwest quarter (SE-1/4 of SW-1/4) 360 acres

Section 2: East half of east half (E-1/2 of E-1/2) Northeast quarter of Northwest quarter (NE-1/4 of NW-1/4) Northwest quarter of Southwest quarter (NW-1/4 of SW-1/4) South half of Southwest quarter (S-1/2 of SW-1/4) southwest quarter of southeast quarter (SW-1/4 of SE-1/4) and northwest quarter of southeast (NW-1/4 of SE-1/4) and Northeast quarter of southwest quarter (NE-1/4 of SW-1/4) less thirty four and four-tenths

(34.4) acres, viz: "A strip eight and sixty hundredths (8.60) chains wide of equal width off north side thereof." 405.6 acres

Section 3: Northwest quarter of northeast quarter (NW-1/4 of NE-1/4) East half of northwest quarter (E-1/2 of NW-1/4) Northwest quarter of Northwest quarter (NW-1/4 of NW-1/4) and south half of south half (S-1/2 of S-1/2) 320 acres

Section 4: Southeast quarter of southeast quarter (SE-1/4 of SE-1/4) Northwest quarter of northeast quarter (NW-1/4 of NE-1/4) Northeast quarter of Northwest quarter (NE-1/4 of NW-1/4) and southeast quarter of northwest quarter (SE-1/4 of NW-1/4) less two and twenty five hundredths (2.25) acres, viz: "Beginning at NW cor. Southeast quarter of Northwest quarter (SE-1/4 of NW-1/4) Sec. 4, go East two and sixty-three hundredths (2.63) chains, go south eight and fifty nine hundredths (8.59) chains, go west two and sixty three hundredths (2.63) chains, go North eight and fifty nine hundredths (8.59) chains," Also, Southeast quarter of southwest quarter (SE-1/4 of SW-1/4) and southwest quarter of southeast quarter (SW-1/4 of SE 1/4) less seven and sixty hundredths (7.60) acres, viz: "Commence at NE. cor. Southwest quarter of southeast quar-

	ter (SW-1/4 of SE-1/4) Sec. 4, go West two hundred (200) feet to and for the point of beginning, from thence go West twenty four hundred forty (2440) feet to NW cor. southeast quarter of southwest quarter (SE-1/4 of SW-1/4) from thence go South one hundred seventy five (175) feet, from thence go East thirteen hundred twenty (1320) feet, from thence go East ..... degrees North eleven hundred twenty (1120) feet, more or less, to the aforesaid point of beginning."	230.15 acres
Section 8:	Northeast quarter of southeast quarter (NE-1/4 of SE-1/4) Southeast quarter of Northeast quarter (SE-1/4 of NE-1/4) and North half of southwest quarter (N-1/2 of SW-1/4)	160 acres
Section 9:	South half (S-1/2) South half of North half (S-1/2 of N-1/2) and Northeast quarter of Northeast quarter (NE-1/4 of NE-1/4)	520 acres
Section 10:	Northeast quarter of Northeast quarter (NE-1/4 of NE-1/4) West half of Northeast quarter (W-1/2 of NE-1/4) Northeast quarter of Northwest quarter (NE-1/4 of NW-1/4) South half of Northwest quarter (S-1/2 of NW-1/4) and southwest quarter (SW-1/4)	400 acres
Section 11:	East half of northeast quarter (E-1/2 of NE-1/4) South half of Northwest quarter (S-1/2 of NW-1/4) North half of south-	

	west quarter (N-1/2 of SW-1/4) and southwest quarter of southwest quarter (SW-1/4 of SW-1/4)	280 acres
Section 12:	Southeast quarter (SE-1/4) Southwest quarter of Northeast quarter (SW-1/4 of NE-1/4) and West half (W-1/2)	520 acres
Section 13:	South half (S-1/2) Southwest quarter of northeast quarter (SW-1/4 of NE-1/4) and south half of northwest quarter (S-1/2 of NW-1/4)	440 acres
Section 14:	Entire	640 acres
Section 15:	Entire less northeast quarter of northeast quarter (NE-1/4 of NE-1/4)	600 acres
Section 17:	Entire less Northeast quarter of Northeast quarter (NE-1/4 of NE-1/4)	600 acres
Section 18:	South half (S-1/2) and south half of north half (S-1/2 of N-1/2)	480 acres
Section 19:	East half of East half (E-1/2 of E-1/2) Northwest quarter of Northeast quarter (NW-1/4 of NE-1/4) and Northeast quarter of Northwest quarter (NE-1/4 of NW1/4)	240 acres
Section 22:	Northeast quarter of Northeast quarter (NE-1/4 of NE-1/4), North half of Northwest quarter (N-1/2 of NW-1/4) southwest quarter of northwest quarter (SW-1/4 of NW-1/4) and South half (S-1/2)	480 acres
Section 23:	East half of southeast quarter (E-1/2 of SE-1/4) Northeast quarter (NE-1/4) and North half of	

	Northwest quarter (N-1/2 of NW-1/4)	320 acres
Section 24:	East half (E-1/2) North half of Northwest quarter (N-1/2 of NW-1/4) and south half of southwest quarter (S-1/2 of SW-1/4)	480 acres
Section 25:	North half of Northeast quarter (N-1/2 of NE-1/4)	80 acres
Section 26:	East half of East half (E-1/2 of E-1/2) Northwest quarter of Northeast quarter (NW-1/4 of NE-1/4) and West half (W-1/2)	520 acres
Section 27:	Southwest quarter of Northeast quarter (SW-1/4 of NE-1/4) Northwest quarter (NW-1/4) North half of Southwest quarter (N-1/2 of SW-1/4) and southwest quarter of southwest quarter (SW-1/4 of SW-1/4)	320 acres
Section 28:	North half of southeast quarter (N-1/2 of SE-1/4) and East half of northeast quarter (E-1/2 of NE-1/4)	160 acres
Section 31:	South half of northwest quarter (S-1/2 of NW-1/4)	80 acres
Section 34:	Northeast quarter of northeast quarter (NE-1/4 of NE-1/4) West half of northeast quarter (W-1/2 of NE-1/4) and Northeast quarter of Northwest quarter (NE-1/4 of NW-1/4)	160 acres
	Total	8,875.75

The grantor herein reserves unto itself, its agents or assigns, the oil, mineral, gas and petroleum, on, in or be-

neath all the lands herein conveyed which are situated in township One North, Range sixteen west, and in township two North, Range Sixteen West, in Lamar County, Mississippi, and the oil, mineral, gas and petroleum, rights and ownership so reserved by this conveyance are restricted solely to the lands herein conveyed in said township one and two North, range sixteen West, Lamar County, Mississippi. The grantor, on behalf of itself, its agents or assigns, hereby reserve the usual and customary rights of ingress and egress, over, across and upon said lands so situated in township one and township two north, range sixteen west, for the purpose of mining, boring, or making other explorations thereon and removing therefrom such oil, mineral, gas and petroleum, as may be found, responsive, however, for such actual damages as may be caused by the grantor, its agents or assigns, in pursuit of such work upon said lands, to fences, buildings, crops and merchantable timber thereon.

Also, the aforesaid Hibernia Bank and Trust Company, in liquidation, grantor herein, does further hereby sell, convey, warrant, transfer and deliver unto the aforesaid grantee herein, W. S. F. Tatum of Hattiesburg, Mississippi, the following described lands and property, including everything of value thereon, therein, or pertaining thereto, to-wit:

FREEHOLD LANDS HEREBY CONVEYED IN LAMAR COUNTY, MISSISSIPPI.

TOWNSHIP 1 NORTH, RANGE 14 WEST.

Section 11: Northwest quarter of southwest quarter (NW-1/4 of SW-1/4) less twenty (20) acres square, being Northwest part thereof 20 acres

TOWNSHIP 1 NORTH, RANGE 15 WEST.

Section 13:	East half of Northwest quarter (E-1/2 of NW-1/4) less a strip of land Ninety nine (99) feet, wide off North end thereof	77 acres
	Total	97 acres
Grand Total		21,435.51 acres

IT IS THE MUTUAL COVENANTS, PURPOSE AND INTENT of all parties hereto or interested herein, whether identified as individual, trust, fiduciary, beneficiary, or corporate—that by this warranty and muniment of title the hereinabove described lands including everything of value thereon, thereunder or pertaining thereto (except as to mineral reservations re lands hereby conveyed in township One north, and township two North, Range sixteen West, and subject to limitations re leasehold lands and timber ownership rights, re lands in Section sixteen, township one North, range fifteen West, and Section sixteen, township two North, range fifteen west, as hereinabove disclosed and specified) are hereby conveyed and delivered to and conferred upon the grantee, W. S. F. Tatum of Hattiesburg, Mississippi, by the grantor and/or grantors herein, to be received, held and possessed, by the said grantee, his heirs and assigns, in fee simple forever.

In Witness Whereof, the Hibernia Bank and Trust Company, in liquidation herein represented by R. N. Sims, special agent of and for J. S. Brock, State Bank Commissioner for the state of Louisiana, and J. Edward McGuire, liquidator, hereunto duly authorized, have caused this instrument and muniment of title to be executed and delivered in the name of and for and on behalf of their

said trust—Hibernia Bank and Trust Company, in liquidation, this the 30th day of December, 1937.

Hibernia Bank and Trust Company, in liquidation
J. S. Brock, State Bank Commissioner
for the State of Louisiana.
By R. N. Sims—Special Agent
By J. Edward McGuire . . . liquidator

STATE OF LOUISIANA
PARISH OF ORLEANS:::
CITY OF NEW ORLEANS:::

This day personally came and appeared before me, the undersigned Notary public, the within named, R. N. Sims, Special Agent for and on behalf of J. S. Brock, State Bank Commissioner, and J. Edward McGuire, liquidator, respectively, acting for and on behalf of the Hibernia Bank and Trust Company, in liquidation, each of whom being personally known to me, and they did each then and there acknowledged that they as such agent and officer acting in their official capacity for and on behalf of their said trust, did sign and deliver the above and foregoing instrument on the day and year therein mentioned.

Given under my hand and official seal at my office, Canal Bank Building, New Orleans, Louisiana, this the 30th day of December, A.D. 1937.

Augusto P. Micerly
Notary Public
New Orleans, Louisiana
December
30th, 1937

SEAL

This is to certify that the attached conveyance of property from Hibernia Bank and Trust Company, in liquidation, to W. S. F. Tatum of Hattiesburg, Mississippi, dated December 30, 1937, is being made pursuant to the liquida-

tion of the Hibernia Bank and Trust Company, an insolvent banks (within the meaning and intent of the Act of March 1, 1879) the assets of which are insufficient for the full payment of the depositors. The Commissioner of Internal Revenue has ruled that under Section 22, of the Act of March 1, 1879, no stamp tax liability will be incurred by the parties to such transaction. No federal stamps are therefore attached.

J. S. Brock, State Bank Commissioner
for the State of Louisiana.
by R. N. Sims . . . Special Agent
by . . . J. Edward McGuire . . . Liquidator
in charge of the liquidation
of Hibernia Bank and Trust Company

APPENDIX "I"

The full faith and credit made requisite by the Constitution was first definitively defined in *Hampton* v. *M'Connel,* 3 Wheat. 234, 4 L.ed. 378, and continued effective through *Crider* v. *Zurich Insurance Co.,* ..... U.S. ....., 13 L.ed. 2d 641, wherein by reason of the plenary power of the State wherein the wrong was wrought, this Court "eroded" that which precedently had been the law. The authority to erode is here exclusively. *Magnolia Petroleum Co.* v. *Hunt,* 320 U.S. 430, 88 L.ed. 149. Our position is that Respondents introduced only thirteen records, no oral evidence, and that none of these records could, under the decisions of this Court erode the full faith and credit requisite because as basically said all of the instruments, substantially, introduced by Respondents predated 1945; and in 1959 Respondents received the order and deed wherethrough Mississippi's Court assumed to vitalize the reservation in the deed of December 30, 1937. An analysis of these instruments, with deference, demonstrates that nei-

ther they nor any of them could affect the full faith and credit of the deed itself and especially of the order of October 1, 1959 ("R." refers to the typewritten Record; "Orig. R." refers to the Record in the Supreme Court of Mississippi):

1. Exhibit 1, R. 108, the deed from Hibernia Bank & Trust Company, in Liquidation, to Singer-Fleischaker Royalty Company, et al, whereunder Respondents claimed, together with the judgment of the Court thereasto. R. 113. This deed and order specifically recognized the reservation as written December 30, 1937. The Liquidation had exclusive jurisdiction thereasto and as an expert acted and interpreted that which they had done in the deed of December 30, 1937, as recorded, making no reference to that assumed to be incorporated by Mississippi's Court through the collateral contract.

2. Exhibit 2, certified copy of the proceedings upon which the said judgment was based. R. 109; Orig.R. 289. This is impotent for the reasons assigned supra.

3. Exhibit 3, certified copy of petition filed on July 7, 1933, in the District Court of the United States, Jackson Division, by W. S. F. Tatum, Rebecca O'Neal Tatum, W. O. Tatum, Frank M. Tatum and Will S. Tatum, composing the firm of Tatum Lumber Company, against Hibernia Bank & Trust Company, in Liquidation, for ancillary receivership. R. 109; Orig.R. 304. At this date the land belonged to the Celtic Land & Improvement Company, was not acquired by the Liquidation until 1937, and was not sold to Tatum until December 30, 1937, four years after this bill was filed. That Tatums were simple contract creditors and Federal equity jurisdiction to appoint ancillary receivers was, with deference, wanting. In *Clark* v. *Williard*, 292 U.S. 112, 129, 78 L.ed. 1160, 1170, this Court said:

"To resume: The Supreme Court of Montana will determine whether there is any local policy whereby an insolvent foreign corporation in the hands of a liquidator with title must submit to the sacrifice of its assets or to their unequal distribution by writs of execution.

"If such a policy exists and the foreign liquidator is thus displaced, other questions may remain as to the power of the state which there is no occasion to consider in advance of the event.

"The decree should be vacated in so far as it adjudges the validity and priority of the respondents' execution * * * and the cause remanded to the Supreme Court of Montana for further proceedings not inconsistent with this opinion."

Thereasto this Court is the judge, saying in *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430, 438, 88 L.ed. 149, 155:

"* * * Even though we assume for present purposes that the command of the Constitution and the statute is not all-embracing, and that there may be exceptional cases in which the judgment of one state may not override the laws and policy of another, this Court is the final arbiter of the extent of the exceptions. * * *."

Respondents did not introduce any parol evidence showing the facts and circumstances existent with reference thereto; that is to say, whether or not this bill was filed at the instance of the Liquidation to preserve intact the domiciliary administration in Louisiana. The Record shows naught done in the ancillary receivership (not even, if it were proper, the sale by the Liquidation to Tatum December 30, 1937). The Petitioners (complainants) objected to the introduction of this exhibit thus, R. 110:

"Your honor, as to that, there is an objection. That is irrelevant and incompetent in this that the laws of

> Louisiana, the constitution and statutes provide for the liquidation of this bank and that this proceeding in Missisippi pre-dated the time at which the property in question, was sold and conveyed by the constituted authorities of Louisiana and therefore is not, in any way, relevant at this time in this that the property whereas to this controversy is was disposed of so that this particular transaction can't have any relevancy thereto whatsoever."

The objection was overruled. R. 112.

4. Exhibit 4, Petition of Ancillary Receivers to join in deed of trust to Reconstruction Finance Corporation, the title to which reads, R. 112; Orig. R. 309-310:

> "PETITION OF R. N. SIMS AND J. EDWARD McGUIRE, ANCILLARY RECEIVERS IN THIS CAUSE OF THE HIBERNIA BANK & TRUST COMPANY, IN LIQUIDATION, FOR AUTHORITY TO JOIN WITH THE DOMICILIARY LIQUIDATING OFFICERS OF THE SAID BANK, IN LIQUIDATION, IN THE EXECUTION OF A DEED OF TRUST OR DEEDS OF TRUST ON CERTAIN MINERAL RIGHTS AND LANDS LOCATED IN LAMAR COUNTY, GEORGE COUNTY AND JACKSON COUNTY, MISSISSIPPI, IN FAVOR OF THE RECONSTRUCTION FINANCE CORPORATION."

This was objected to on substantially the same grounds as Exhibit 3, but was overruled by the Chancellor. R. 124. The sale was made December 30, 1937, and this mortgage was not initiated until two years thereafter—1939. The Tatums were not parties to it in any way. The surrounding facts were in no wise proved. The petition was filed by Dufour, St. Paul & Levy and Green, Green & Jackson on behalf of the Ancillary Receivers of the Liquidation to satisfy a demand, as therefrom appears, of the Reconstruction Finance Corporation so that the Ancillary Receivers of the

said Court would be bound by the mortgage, if one was executed, of the Liquidation, the averment thereasto being, Orig.R. 313:

> "9. The petitioners further represent unto the Court that inasmuch as the hereinabove referred to mineral rights and lands constitute and are assets of the domiciliary liquidating officers of the said Hibernia Bank & Trust Company in Liquidation, under the facts as hereinabove set forth, demand has been made upon the Ancillary Receivers herein to join with the domiciliary liquidating officers of the Hibernia Bank & Trust Company, in Liquidation, in a deed of trust or deeds of trust covering the mineral rights reserved in, on and under the lands described in 'Exhibit A and B' and a deed of trust on the lands described in 'Exhibit C', all in favor of the Reconstruction Finance Corporation. The Ancillary Receivers represent unto the Court that it appears to them that they should be authorized by this Court to join with the Domiciliary Liquidating Officers in the execution of said deed of trust or deeds of trust to place beyond any question such deed or deeds of trust authorized to be executed by the said Civil District Court of the Parish of Orleans by the Domiciliary Liquidating Officers of said Bank in Liquidation in favor of the said Reconstruction Finance Corporation. And by joining in the execution of said instrument to pledge what interest, if any, the Ancillary Receivers herein have in and to the hereinabove described mineral rights and property by virtue of the same being located within the State of Mississippi. However, the Ancillary Receivers are of the opinion and so represent unto the Court that they have not acquired any right, title or interest in the said mineral rights or land by virtue of their appointment as Ancillary Receivers herein, and their chief duty in the premises by virtue of their appointment was to preserve and protect the said property which is, in fact, an asset of the Domiciliary Liquidating Officers of said Bank in Liquidation."

Note that the proceedings in Cause No. 202-253 in the Civil District Court were not introduced nor was the mortgage so authorized, if it were executed, introduced. The relationship of the attorneys who filed the petition is not in any wise made clear, it being perfectly competent for one firm, Green, Green & Jackson, to have two clients and act for one without binding the other. Fraud can never be presumed. *Taft v. Taft*, ... Miss. ....., 172 So.2d 403.

5. Exhibit 5, order on the petition, Exhibit 4, authorizing ancillary receivers to join domiciliary receivers in excuting deeds of trust to Reconstruction Finance Corporation. R. 124; Orig. R. 324. Mr. Tatum was not a party thereto. Objection thereto was overruled. R. 125. The order recited, Orig. R. 330:

> "It further appears to the Court, and the Court so finds, that all of the outstanding capital stock of Celtic Land & Improvement Company, as well as the said lands and mineral rights, were and are assets of the domiciliary liquidating officers of the Hibernia Bank & Trust Company, in Liquidation, and do not now and never did constitute assets of the ancillary receivers in Mississippi. The Court further finds that the Ancillary Receivers should be authorized by this Court to join in the execution of a deed of trust or deeds of trust in favor of the Reconstruction Finance Corporation, covering the mineral rights retained on the lands herein firstly and secondly described and in the execution of a deed of trust in favor of the Reconstruction Finance Corporation on the lands herein thirdly described, all as security for the payment of the indebtedness of the said Hibernia Bank & Trust Company, in Liquidation, in favor of the Reconstruction Finance Corporation."

Thus specifically showing that the property sold to Tatum and that reserved to the Liquidation in said deed "never

did constitute assets of the ancillary receivers in Mississippi".

6. Exhibit 6, order of the United States District Court on July 12, 1954, terminating the ancillary receivership. R. 125; Orig. R. 332. Complainants raised some objections which were overruled, R. 125, but therefrom inter alia it appeared, Orig. R. 332:

> "* * * that the Hibernia Bank & Trust Company was a Louisiana corporation, domiciled in Louisiana under the control of the Commissioner of Banks of Louisiana and subject at all times to the Constitution and Laws of that state, and has at all times during its liquidation been under the supervision and control of the Commissioner of Banks of Louisiana and is now under said control in accordance with the Constitution and Laws of said state; * * *; and that said Ancillary Receiver did tender his resignation as Liquidator of said bank, to be effective on the 31st day of March, 1954, to the Commissioner of Banks for the State of Louisiana, who continues to have the control and supervision of the remaining assets of said bank in liquidation in accordance with the Constitution and Laws of the State of Louisiana; * * *.
>
> * * *
>
> "5. That the acts had and done by R. N. Sims and J. Edward McGuire herein, pursuant to and in accordance with the orders and directions of this Court be and they are hereby ratified, approved and confirmed."

Let it be carefully noted that no other pleas and proceedings in the United States District Court of Mississippi were introduced. Petitioners' contention is, with deference, under *Relf* v. *Rundle,* 103 U.S. 222, 26 L.ed. 337, as admitted proper in *Morris* v. *Jones,* 329 U.S. 545, 91 L.ed. 488, 494, that the statutory receiver's jurisdiction was co-extensive

with the area wherein business was done. In *Berry* v. *Brunt*, ... Miss. ....., 172 So.2d 398, where a defendant made a payment for alleged damages and the Court gave a peremptory instruction, it was held that this did not constitute a scintilla of proof.

7. Exhibit 7, copy of petition, order and exhibits in Cause No. 202-253, as to the collateral contract of December 30, 1937. R. 126; Orig. R. 335. This was objected to, especially parts of the exhibits to the Petition where it was recited in the letter of December 10, 1937, Orig. R. 342:

> "(e) On behalf of our trust, we, in accordance with our telephone conversation, will reserve all mineral rights upon or beneath the lands which we proffer to convey to you by warranty, situated only in Township 1 North and Township 2 North, Range 16 West, Lamar County, Mississippi, including with said reservation the usual and customary reservation of ingress and egress rights upon said lands for mineral exploration and removal purposes."

Let it be expressly noted that the deed as tendered did not include the phraseology of this letter when the deed was delivered December 30, 1937, but more especially when Singer assumed to purchase on October 7, 1959, in accordance with the deed transmitted to Tatum, the description of the deed of December 30th was used and not that in the proffered deed. Respondents claim through the deed as actually executed and for more than twenty years gravel had been sold and the land seeded to pine timber. The Chancellor overruled the Petitioners' objection, R. 131.

It might have been that the Louisiana law would not have included gravel as having been reserved, thus limiting the constitutional question. Compare 95 *A.L.R. 2d* 843, "Clay, sand, or gravel as 'minerals' within deed, lease or

license"; *Bambauer* v. *Menjoulet*, 214 Cal.App. 2d 871, 29 Cal.Reptr. 874, 95 A.L.R. 2d 839; *Bumpus* v. *United States*, C.A. 10, 325 F.2d 264.

Note that the liquidation of Hibernia is still in esse and has not been before the Mississippi Court in any way and been given by the Mississippi Court an opportunity to declare, with deference, that the fee was in Petitioners, subject only to a reservation of hydrocarbons.

8. Exhibit 8, order of Civil District Court authorizing execution of oil and gas lease to W. S. F. Tatum, July 31, 1940. R. 132; Orig. R. 362. Objection was interposed, R. 133, on the ground of incompetency, it being admitted that the Liquidation had the hydrocarbons and would not lease unless Tatum agreed to pay royalty upon those minerals which he claimed, and to evidence this, he signed the lease. The objection was overruled, R. 133. The salt dome was discovered by Tatum and, with deference, he had a deed to the "land" less the hydrocarbons and on the face of the records the salt was his. He never made a deed thereto to anyone, but so long as he held under the lease he could not deny the Liquidation's title, but was compelled to pay the reasonable royalty. The surrounding circumstances were not at large introduced. No production was had and the lease promptly surrendered, not, however, until after there had been an assignment to Freeport Sulphur Company, which sank wells without success and likewise surrendered.

9. Exhibit 9, agreement between W. S. F. Tatum and Freeport Sulphur Company, April 1, 1941. R. 133; Orig. R. 216A. Objection was overruled, R. 134.

10. Exhibit 10, subordination of deed of trust to lease. R. 134; Orig. R. 220. The Reconstruction Finance Corporation certainly had a mortgage on the oil and gas at the date whereat the lease was made to W. S. F. Tatum which

had to be subordinated to Tatum's rights so as that if production was had the Reconstruction Finance Corporation could not defraud Tatum. The actual mortgage, however, does not appear in the record. Objection was overruled, R. 134.

11. Exhibit 11, lease executed by Hibernia Bank & Trust Company, in Liquidation, to W. E. Scott, on December 14, 1943, after Mr. Tatum had surrendered his lease thereon. R. 134. This lease was excluded, R. 135, and not considered either by the Chancery or the Supreme Court.

12. Exhibit 12, R. 135, similar lease executed by Hibernia Bank & Trust Company, in Liquidation, to C. B. Pennington, October 16, 1945, was excluded by the Chancellor, R. 136, and by the Supreme Court of Mississippi and hence is not before this Court.

13. Exhibit 13, R. 136, 141, the collateral contract executed as at December 30, 1937, adverted to above. The copy which was found in the Tatum files did not have any of the exhibits thereto, especially the letter of December 10, 1937. Objection was overruled, R. 139.

Petitioners are entitled to full faith and credit as to (1) the Louisiana Constitution; (2) Revised Statutes 6:386, Articles 1945 and 2276, LSA-Civil Code; (3) the deed executed by the Liquidation pursuant to the delegated power of Louisiana; and (4) the decisions made by the Louisiana Court hereasto. Thereunder, with deference, there is not a scintilla that would authorize this Court to erode the Full Faith and Credit Clause; but if so, it is such a question as that the Supreme Court of Louisiana, under competent proof, can make a determination which will be conclusive upon this Court, *Henry* v. *Mississippi*, ... U.S. ....., 13 L.ed. 2d 408, unless it be as in that case this Court can sever and divide so as to demonstrate that that done by Louisiana was not under its State sovereignty and did not contravene the United States Constitution.

APPENDIX "J"

UNITED STATES OF AMERICA

(Seal)

STATE OF LOUISIANA

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

I, THOMAS S. BUCKLEY, Clerk of the Civil District Court for the Parish of Orleans, DO HEREBY CERTIFY, That the attached copy of order is a true and correct copy of the order on file in the archive of my Office, In Re:

IN RE: LIQUIDATION OF

No. 202-253 Division "D" Docket #5

HIBERNIA BANK & TRUST COMPANY

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court, at the CITY OF NEW ORLEANS, on this 7th day of April, in the year of our Lord, one thousand nine hundred and Sixty-five and in the one hundred and 89th year of the Independence of the United States of America.

/s/ Thomas S. Buckley,

(Seal) Clerk.

I, A. E. RAINOLD, presiding Judge of the Civil District Court for the Parish of Orleans, DO HEREBY CERTIFY THAT THOMAS S. BUCKLEY is the Clerk of said Court, that the same is a Court of Record having probate jurisdiction, and that the signature, THOMAS S. BUCKLEY, Clerk, to the foregoing certificate is in the proper handwriting of him, the said THOMAS S. BUCKLEY, Clerk; to his official act as such, full faith and credit are due; and owing; and I DO FURTHER CERTIFY that his attestation is in due form of law.

Given under my hand, at the City of New Orleans, on the 7th day of April, in the year of our Lord, one thousand nine hundred sixty-five.

/s/ A. E. Rainold,
(Seal) Presiding Judge.

I, THOMAS S. BUCKLEY, Clerk of the Civil District Court for the Parish of Orleans, DO hereby certify that A. E. Rainold whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, presiding Judge of the Civil District Court for the Parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

WITNESS my hand and the seal of said Court, this 7th day of April, 1965.

/s/ Thomas S. Buckley,
(Seal) Clerk.

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NUMBER 202-253 DIVISION "D" DOCKET NUMBER 5

IN RE: LIQUIDATION OF
HIBERNIA BANK & TRUST COMPANY

FILED: ....
DEPUTY CLERK

Order

Considering the foregoing petition and affidavit, filed herein on November 19, 1964, and further considering that due proof of notice by advertisement has been made in accordance with law, and that the foregoing petition has been spread upon the Receiver's Order Book for the period

required by law and that no opposition has been filed thereto, and further that proper and complete evidence has been produced to this Court.

IT IS ORDERED ADJUDGED AND DECREED that A. Clayton James, State Bank Commissioner, through his Special Agent, Joseph J. Cangiamilla, in charge of the Hibernia Bank & Trust Company, in Liquidation, be and he is hereby authorized and empowered, for and on behalf of this Liquidation, to pay a liquidating dividend of one per cent (1%) of all balances on all Deposit Accounts, Trust Department Accounts, Coupon Department Accounts, Accounts Payable and other ordinary claims, and all balances of checks, certificates of deposit and drafts which, on this date, or heretofore, have been transferred to the Public Administrator for the Parish of Orleans as uncalled for or abandoned accounts. The sum necessary for these payments equals twenty-two thousand two hundred fifty dollars and seventy-seven cents ($22,250.77).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that A. Clayton James, State Bank Commissioner, through his Special Agent, Joseph J. Cangiamilla, in charge of the Hibernia Bank & Trust Company, in Liquidation, be and he is hereby authorized and empowered, for and on behalf of this Liquidation, to pay one per cent (1%) of the unpaid balances on outstanding checks, certificates and drafts of the Hibernia Bank & Trust Company, in Liquidation, by depositing funds with the Hibernia National Bank in New Orleans with instructions to pay the rightful owners thereof upon presentation of such checks, certificates and drafts for endorsement thereon of such payment. The deposit to be made with the Hibernia National Bank in New Orleans, for this purpose, shall be in the amount of three hundred ninety-one dollars and eighty-five cents ($391.85).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that A. Clayton James, State Bank Commissioner, through his Special Agent, Joseph J. Cangiamilla, in charge of the Hibernia Bank & Trust Company, in Liquidation, be and he is hereby authorized and empowered, for and on behalf of this Liquidation, to pay to George Westerhaus, Office Manager and Bookkeeper for the Hibernia Bank & Trust Company, in Liquidation, the further sum of four hundred twenty dollars ($420.00) for additional salary and/or wages.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that A. Clayton James, State Bank Commissioner, through his Special Agent, Joseph J. Cangiamilla, in charge of the Hibernia Bank & Trust Company, in Liquidation, be and he is hereby authorized and empowered, for and on behalf of this Liquidation, to pay to Joseph J. Cangiamilla, Special Agent for the Hibernia Bank & Trust Company, in Liquidation, and to Henry C. Vosbein, Attorney for the Hibernia Bank & Trust Company, in Liquidation, each, the sum of two thousand three hundred forty-two dollars and fifty cents ($2,342.50) as additional remuneration for the special services rendered in connection with the accumulations of funds necessary to make the payments herein above as well as for special efforts performed by each of them in connection with the payment of the liquidating dividend herein as well as the other Orders issued by this Court on this date in this matter.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that A. Clayton James, State Bank Commissioner, through his Special Agent, Joseph J. Cangiamilla, in charge of the Hibernia Bank & Trust Company, in Liquidation, be and he is hereby authorized and empowered, for and on behalf of this Liquidation, to do and perform all acts and

things necessary or appropriate in the premises, including the signing of any and all checks, drafts, or documents necessary for the proper and legal compliance with the Orders of this Court issued herein.

New Orleans, Louisiana, December 4, 1964.

/s/ Julian E. Bailes
JUDGE

A TRUE COPY
/s/ J. W. Picchio
Deputy Clerk, Civil District Court, Parish of Orleans, State of Louisiana

(Seal)